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In the Matter of

Distribution of 1998 and 1999
Cable Royalty Funds

Docket No. 2001-8 CARP CD 98-99
GENERAL COUNSEL
OF COPYRIGHT

JAN 10 2003

**PROGRAM SUPPLIERS' OBJECTIONS TO
DIRECT CASE OF NATIONAL ASSOCIATION OF BROADCASTERS**

Pursuant to section 251.45(b) of the Copyright Arbitration Royalty Panel Rules and Procedures ("CARP Rules") and the Scheduling Order dated October 28, 2002, as amended by the Copyright Office Order dated December 23, 2002, Program Suppliers hereby file their objections to the Direct Case of the National Association of Broadcasters ("NAB"). Initially, Program Suppliers move to compel production of documents that underlie the testimony of NAB, but which NAB has refused to produce despite repeated requests. Where appropriate as an alternative, Program Suppliers seek to have the pertinent testimony stricken from the record to the extent NAB fails to provide the underlying documents as ordered.

Program Suppliers rely on well established principles for this Motion. Section 251.45(c)(1) of the CARP Rules provides in relevant part that "parties may request of an opposing party nonprivileged underlying documents related to written exhibits and testimony." The parties' obligations under this rule is articulated further in the Librarian's Order of October 30, 1995.

1. *Limited scope of discovery.* Discovery in CARP proceedings is intended to produce only the documents that underlie the witness' factual assertions. It is not intended to augment the record with what the witness might have said or put

forward, or to range beyond what the witness said. Any augmentation of the record is the prerogative of the arbitrators, not the parties.

For example, articles mentioned in a resume are not discoverable to test whether a witness is being consistent. They are only offered to support the witness' knowledge and experience. Whereas, articles cited within the body of the testimony are discoverable to see whether they, in fact, support the methods being used.

2. *Bottom-line figures must be verified.* Parties who offer bottom-line figures in a CARP proceeding must be prepared to share all the underlying data that contributed to those bottom-line figures, notwithstanding the problems of confidentiality. Each of the data inputs in a survey or study could contain errors or be the source of undercounting for one or more of the Phase I parties, and therefore, they are all important to the process of verification.

Therefore, in a number of rulings, the Office has directed the parties to negotiate in good faith protective orders so that the underlying data can be revealed and confidentiality can be protected.

3. *Underlying data must be furnished in as organized and usable a form as possible.* CARP proceedings operate under tight deadlines. For the proceeding to run smoothly and quickly, all parties must be prepared to furnish to their opposing sides the underlying documents in as organized and usable a form as possible, namely, in computer tapes or discs even when the hard copy has been furnished.

In the Matter of 1990-92 Cable Copyright Royalty Distribution Proceeding, Docket No. 94-3

CARP CD 90-92, at 1-2 (footnote omitted). During discovery, Program Suppliers sought documents underlying specific factual assertions in NAB's testimony. However, in violation of these principles, NAB either failed to provide any underlying documents, produced non-responsive or partially responsive documents, or did not produce documents in an organized or usable fashion.

Unless otherwise specifically requested below, Program Suppliers request the following: if NAB has underlying documents that it has failed to produce, it should be compelled to produce them. If NAB does not produce such documents, Program Suppliers request that the identified pertinent testimony be stricken from the record. In those instances where NAB failed to produce documents in an organized or usable manner, Program Suppliers ask that the Librarian compel NAB to produce such documents in an organized or usable manner.

A. Documents Related to the Testimony of Richard V. Ducey ("Ducey Testimony")

1. In Dr. Ducey's testimony, he asserts that he is the President of SpectraRep, a division of the BIA Financial Network ("BIAfn"), for which he serves as executive vice president. In addition, Dr. Ducey provides a brief description of the nature of the business of both SpectraRep and the BIAfn. Ducey Testimony at 1. Program Suppliers requested that NAB provide them with documents underlying the types of entities that SpectraRep and the BIAfn are, and the entities' respective interest holders. In essence, Program Suppliers sought documents that spoke to the corporate structures of SpectraRep and BIAfn, and the nature of the businesses in which they were engaged. NAB produced no documents whatsoever related to this request and objected "on the grounds that CARP rules do not require production of such documents, that the information relates to the witness's background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony." See NAB's Responses to Program Suppliers' Initial Discovery Requests ("NAB Initial Responses") at 3 (Ducey Nos. C1 and C2); and NAB's Responses to Program Suppliers' Follow-up Discovery Requests ("NAB Follow-up Responses") at 2-3 (Ducey Nos. 86 and 87).¹ NAB's objections, however, are

¹ NAB Initial Responses are attached hereto as Exhibit A. NAB Follow-up Responses are attached hereto as Exhibit B.

completely invalid because the documents sought by Program Suppliers underlie factual assertions in Dr. Ducey's testimony.

First, the documents requested are specifically directed at assertions in Dr. Ducey's testimony concerning the nature of both SpectraRep's and BIAfn's businesses. Second, the reputations of SpectraRep and BIAfn are squarely at issue here. Dr. Ducey boldly declares the study produced by BIAfn as "the most comprehensive survey to date" of distant signal programming. Ducey Testimony at 4. Thus, the nature of the business engaged in by both SpectraRep and BIAfn (as described in Dr. Ducey's own words), particularly the realm of expertise BIAfn possesses to author such a study, is germane to this proceeding.

Moreover, because Dr. Ducey's responsibilities involve two distinct yet apparently intertwined entities, production of documents demonstrating the corporate structures of, and interest holders of, both entities is entirely reasonable for discovery purposes. Third, characterizing the requests as relating to the witness' "background and credentials" is incorrect. The request plainly seeks underlying documents concerning assertions made by Dr. Ducey, in his testimony, about SpectraRep and BIAfn; the request does not seek documents concerning Dr. Ducey's personal background. Fourth, NAB does not deny that the requested documents exist. In its response to Program Suppliers' follow-up request, it stated only that it "had not determined whether any documents are responsive to this request." NAB Follow-up Responses at 2-3 (Ducey Nos. 86 and 87). Based on the foregoing, Program Suppliers request that the Librarian compel the production of documents underlying the type of entities that SpectraRep and the BIAfn are, as well as the respective entities' interest holders.

2. In his testimony, Dr. Ducey asserts as follows:

I have taught both undergraduate and graduate courses and have concluded industry panels, seminars and speeches on research methodology, statistical analysis, telecommunication technology and strategic marketing.

* * *

My current understanding about the cable marketplace comes from my extensive academic and industry research as well as my first-hand experience in talking directly with that system's subscribers, and reviewing subscriber surveys with various cable operators.

* * *

Later, I also had access to subscriber surveys as part of my academic research and industry consulting. And I continued to monitor and study the cable industry, through reviewing industry trade press, meeting with professional colleagues, and reviewing academic research as part of my job at NAB. As a member of the editorial boards of the Journal of Broadcasting and Electronic Media, the Journal of Media Economics, and the Communication Research; I have also reviewed research on various aspects of the cable industry.

Ducey Testimony at 2-3. In connection with the foregoing statements, Program Suppliers requested that NAB provide underlying documents. NAB failed to produce any underlying documents whatsoever and objected "on the grounds that CARP rules do not require production of such documents, that the information relates to the witness's background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony." NAB Initial Response at 4-5 (Ducey Nos. C5, C6, C7, and C8); NAB Follow-up Responses at 3-5 (Ducey Nos. 88, 89, 90, 91). NAB's objections, however, are completely invalid because the documents sought by Program Suppliers underlie factual assertions in Dr. Ducey's testimony and as such are well within the CARP rules.

The requested documents specifically target assertions within Dr. Ducey's testimony concerning the range of experience he claims to possess in various areas. These various experiences are, without question, an effort by NAB to demonstrate the breadth of Dr. Ducey's expertise and how that expertise informs his conclusions in this proceeding. Even if as NAB

claims, the CARP Rules bar requests for documents about "background and credentials," Program Suppliers clearly seek more than simple background information. Indeed, it is worth noting that Program Suppliers' refrained from asking about any item specifically addressed in Dr. Ducey's curriculum vitae. Based on these reasons, Program Suppliers request that the Librarian compel the production of documents underlying the above assertions. If NAB fails to produce the underlying documents, Program Suppliers ask that the above-identified portion of Dr. Ducey's testimony be stricken from the record.

3. In response to several of Program Suppliers' initial discovery requests, NAB provided Program Suppliers with two CD-ROM disks containing data underlying the testimony of Dr. Fratrik ("Fratrik Disk No. 1" and "Fratrik Disk No. 2"). In follow-up requests, Program Suppliers informed NAB that the data provided on the two CD-ROM disks were disorganized and unusable in the format submitted because: (a) no index or key to interpret the data had been provided along with the disks; and (b) the text contained in the CD-ROM files, in many instances, failed to show delineated fields which would allow one to differentiate one type of data from another. Program Suppliers went so far as to compare Fratrik Disk Nos. 1 and 2 to the CD-ROM produced by NAB in connection with the testimony of another of its witnesses, Dr. Rosston, pointing out (as an example) that the CD-ROM associated with Dr. Rosston's testimony included an index.² In response, NAB stated that it would provide an index or key to the data on the specified disks as well as an explanation of the fields contained within the files. Although NAB has complied with respect to Fratrik Disk No. 1, it has failed to do so with respect to Fratrik Disk No. 2.

CARP rules require that underlying data be furnished in as organized and usable a form as possible. *In the Matter of 1990-92 Cable Copyright Royalty Distribution Proceeding*, Docket

No. 94-3 CARP CD 90-92, at 1-2 (footnote omitted). In the present case, Fratrik Disk No. 2 merely contains an undifferentiated group of 5 Microsoft Excel and 10 text files. Thus, there is no way for Program Suppliers to determine which file is responsive to which specific Program Supplier document request. For that reason it is also unclear whether the files are fully responsive to Program Suppliers' requests. This problem is compounded by the fact that NAB refers Program Suppliers to Fratrik Disk No. 2 approximately 42 times in response to various discovery requests promulgated by Program Suppliers. Additionally, NAB has failed to provide a key to the data contained on Fratrik Disk No. 2 despite having provided a key with respect to the data contained on Fratrik Disk No. 1. Accordingly, Program Suppliers request that the Librarian compel the production of Fratrik Disk No. 2 in the manner requested by Program Suppliers. Furthermore, to the extent such documents are not provided by NAB, Program Suppliers request that the Librarian strike the testimony to which the requests relate as are set forth on Exhibit "C" attached hereto.³ Because Program Suppliers have had extreme difficulty ascertaining the responsiveness of information contained in the disks, Program Suppliers reserve the right to make follow-up requests if and when NAB finally submits responsive documents.

4. Dr. Ducey asserts that "PBS and Canadian programming, which stayed at a relatively constant level of carriage between 1992 and 1998-1999, now represents a larger relative percentage of the programming universe." Ducey Testimony at 12. Program Suppliers requested that NAB provide documents underlying such an assertion. NAB provided 31 spreadsheets which only partially responded to the request in that while the spreadsheets specifically mentioned "Canadian" programming, they failed to mention "PBS" programming. In a follow-up request, Program Suppliers once again requested that NAB produce documents

² The index was produced in the form of a "ReadMe.txt" file.

³ Each portion of the testimony sought to be stricken is identified with the relevant discovery request number.

associated with the assertion concerning "PBS" programming. In response, NAB stated that it believed that documents had already been provided and objected to the follow-up request on the grounds that the request was "ambiguous and incomprehensible." NAB's objections lack merit. While Dr. Ducey's testimony clearly makes specific assertions regarding "PBS" programming, nowhere on the 31 spreadsheets produced by NAB is there any mention of "PBS." Indeed, this is precisely the reason why Program Suppliers limited their follow-up request to information regarding "PBS" programming as opposed to "PBS" and "Canadian" programming. Further, considering that the follow-up request precisely mirrors specific assertions made by Dr. Ducey in his testimony, how NAB could find the follow-up request "ambiguous and incomprehensible" stretches the imagination. Accordingly, Program Suppliers request that the Librarian compel the production of such documents, or alternatively, strike the identified testimony from the record insofar as it mentions "PBS programming."

**B. Documents Related to the Testimony of Marcellus Alexander, Jr.
("Alexander Testimony")**

1. In his testimony, Mr. Alexander asserts as follows:

I am aware that the station was carried as a distant signal in 1999 by a number of cable systems in smaller television markets in upstate Pennsylvania, as well as in New Jersey and Delaware.

I am aware that WJZ was carried by cable systems from one end of the state of Maryland to the other, in addition to systems in DC, Delaware, Pennsylvania, and even West Virginia.

Alexander Testimony at 2, 4. Additionally, NAB produced Exhibit 9 to its Phase I Direct Case in association with Mr. Alexander's testimony. In this connection, Program Suppliers requested that NAB provide documents underlying these various assertions as well as Exhibit 9. NAB responded stating that Data would be "provided in electronic form in response to requests

directed to Dr. Fratrik." NAB Initial Responses at 22-27 (Alexander Nos. C4, C12, and C19). However, for the reasons stated in § A3 of the instant Motion concerning Fratrik Disk No. 2, supra, Program Suppliers maintain that NAB has not fully responded to Program Suppliers' requests. Accordingly, Program Suppliers ask for the same relief it articulates in § A3 of the instant Motion concerning Fratrik Disk No. 2. Furthermore, to the extent such documents are not provided by NAB, Program Suppliers request that the Copyright Office strike the relevant testimony quoted above together with Exhibit 9 to NAB's Phase I Direct Case. Finally, because Program Suppliers have had extreme difficulty ascertaining the responsiveness of information contained in Fratrik Disk Nos. 1 and 2, Program Suppliers reserve the right to make follow-up requests if NAB finally submits responsive documents.

C. Documents Related to the Testimony of Mark R. Fratrik ("Fratrik Testimony")

1. Dr. Fratrik states that he is the Vice President of the BIA Financial Network. In this connection, Program Suppliers requested that NAB provide them with documents underlying the type of entity BIAfn is and its interest holders. Program Suppliers have articulated at § A1 of the instant Motion, supra, why NAB should be compelled to produce the requested documents. Those reasons apply here as well.

2. Program Suppliers previously requested that NAB provide all documents that underlie the data reported in Exhibit 10, Appendices 1 and 3 of NAB's direct case. In response, NAB stated that it would provide the data underlying the appendices in electronic format. NAB Initial Responses, at 37 (Fratrik Nos. C38 and C40). The only documents provided to Program Suppliers, however, were copies of Exhibit 10, Appendices 1 and 3 themselves. Program Suppliers then requested, in light of NAB's responses to Program Suppliers' initial discovery requests, that NAB provide documents responsive to the original

requests (i.e., provide the data underlying the appendices in electronic format). In response, NAB objected to the follow-up requests as "ambiguous and incomprehensible" and stated that it believed the responsive materials had already been provided. NAB Follow-up Responses, at 14 (Fratik Nos. 72 and 73). NAB's objections are without basis.

There are two issues: first, NAB's failure to provide underlying documents and, second, its failure to provide such documents in electronic format. Appendix 1 of NAB's Exhibit 10 titled, "TV Data's Program Type Definitions and Examples," contains not only definitions of program types but also what appears to be definitions of commonly used industry phrases. Whether this appendix was excerpted from another document or is a stand-alone document is not discernible since NAB has refused to respond appropriately to Program Suppliers' request. Appendix 3 of NAB's Exhibit 10 is titled "List of Devotional Claimants Program Titles." Presumably this list was created from an existing data source. These appendices underlie factual assertions in NAB's Exhibit and therefore NAB should have produced the underlying documents.

NAB also must produce the requested data in electronic form as it promised to do. Program Suppliers note that for each document request that Program Suppliers made to NAB in which electronically formatted documents were ultimately produced, NAB provided Program Suppliers with a reference to one or more electronic documents. In the present situation, however, while NAB's responses to Program Suppliers discovery requests stated that NAB would provide the data underlying the Appendixes in electronic format, no such provision has been made. Indeed, the only documents that were provided to Program Suppliers were hard copies of Exhibit 10, Appendices 1 and 3 themselves. Accordingly, Program Suppliers request that the Librarian compel the production of documents underlying the data reported in Exhibit 10, Appendices 1 and 3 of NAB's direct case. If NAB fails to provide existing documents as

ordered, Program Suppliers ask that both appendices and all related testimony be stricken from the record.

D. Documents Related to the Testimony of Gregory L. Rosston ("Rosston Testimony")

1. In response to several of Program Suppliers' initial discovery requests, NAB produced Program Suppliers with a CD-ROM disk containing several files of data purportedly underlying the testimony of Dr. Rosston ("Rosston Disk"). In follow-up requests, Program Suppliers requested that NAB identify the source(s) of the data for the following files contained on the Rosston Disk because such information was not apparent from a review of contents of the files: (a) 97_sub_channel_data.xls and (b) master_dataset_for_expert_report.xls. However, NAB failed to do so.⁴ Further, NAB also failed to produce the source(s) of data for the following file contained on the CD-ROM disk produced as a supplemental response to Program Suppliers' original document request: lrhct01_.xls.

CARP Rules require that, because each of the data inputs in a survey or study could contain errors or be the source of undercounting for one or more of the Phase I parties, bottom line figures must be verified. Librarian's Order of October 30, 1995. Complete verification of data is impossible without ever knowing the identity of the source of such data. This problem is magnified by the fact that NAB references the Rosston Disk in response to approximately 50 of Program Suppliers' discovery requests. Program Suppliers are, at a minimum, entitled to know the sources of the data inputs. Accordingly, Program Suppliers request that the Librarian compel NAB to identify the source of the files identified above. Furthermore, to the extent NAB fails to do so, Program Suppliers request that the Librarian strike the relevant testimony as set forth on Exhibit "D" attached hereto.

E. Documents Related to the Testimony of Laurence J. DeFranco ("DeFranco Testimony")

1. Mr. DeFranco asserts that he is the President and co-founder of iMapData, Inc. In addition, Mr. DeFranco provides a brief description of the nature of the business of iMapData, Inc. In this connection, Program Suppliers requested that NAB provide them with documents underlying the type of entity, and interest holders in, iMapData, Inc. NAB produced no documents and objected "on the grounds that CARP rules do not require production of such documents, that the information relates to the witness's background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony." NAB Initial Responses, at 51 (DeFranco No. C1); and NAB Follow-up Responses, at 21 (DeFranco No. 15). In § A1 of the instant Motion, supra, Program Suppliers articulate the reasons why NAB has an obligation to produce underlying documents with respect to SpectraRep and BIAfn. Those reasons apply here as well with respect to iMapData.

2. Program Suppliers previously requested that NAB provide all documents that underlie, and the documents to which Mr. DeFranco referred to form the basis of, certain statements attached hereto as Exhibit "F". NAB responded by providing a CD-ROM disk ("DeFranco Disk") containing the following six Microsoft Excel spreadsheet files on it: (a) FULLIS_98.xls, (b) fulllist99_2.xls, (c) GEOX.DBF, (d) PFI.DBF, (e) PICADAD.DBF, and (f) US_GNIS.DBF. Program Suppliers then sought, in a follow-up request, information concerning the author or source of each of the six Microsoft Excel spreadsheets because such information was not apparent from a review of the files. Further, Program Suppliers sought the underlying source of the data with respect to each Excel spreadsheet in question. In response, NAB merely referenced the Rosston Disk as containing the requested underlying documents.

⁴ Admittedly, Program Suppliers made no mention of this file in their follow-up discovery requests to NAB.

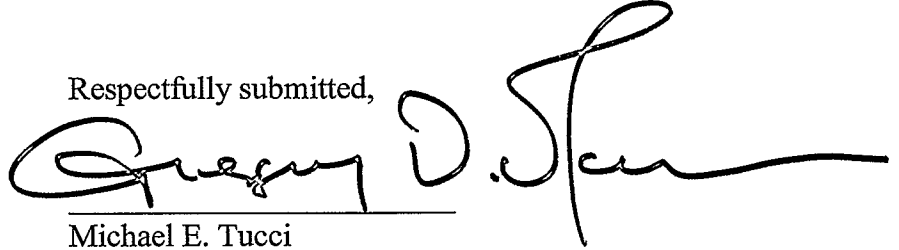
NAB's response to Program Suppliers' follow-up request for the identity or the source of data still fails to answer the question. Indeed, the Rosston Disk contains nine files several of which are lengthy Excel spreadsheet files with numerous fields in no apparent way connected with any of Program Suppliers requests to Mr. DeFranco which make determining the original source of the data impossible. Accordingly, Program Suppliers request that the Librarian compel NAB to identify the author and source of the files identified above. Furthermore, to the extent NAB fails to do so, Program Suppliers request that the Librarian strike the relevant testimony as set forth on Exhibit "E" attached hereto.

3. Mr. DeFranco asserts that "I used 1993 ADI boundaries to identify the 1998-99 media boundaries and ranks." Program Suppliers asked for and NAB failed to produce any underlying documents despite stating it would "provide documents underlying the specified statement. NAB Initial Responses, at 54 (DeFranco No. C9). Further, NAB objected to Program Suppliers follow-up request for such documents on the grounds that the follow-up request was ambiguous and incomprehensible. NAB Follow-up Responses, at 24 (DeFranco No. 21). NAB's objection, however, is completely invalid because the follow-up request could not have been clearer.

The documents requested are specifically directed at Mr. DeFranco's assertion that he used 1993 ADI boundaries to identify the 1998-99 media boundaries and ranks. Simply put, NAB has failed to produce the underlying documents. Therefore, Program Suppliers request that the Librarian compel the production of documents underlying the above assertion.

For the reasons stated herein Program Suppliers ask that the Librarian grant this motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregory O. Olaniran", written over a horizontal line.

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January 10, 2003

Exhibit "A"

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December 10, 2002

VIA EMAIL AND FIRST-CLASS MAIL

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Re: 1998-1999 Cable Royalty Distribution Proceeding
Docket No. 2001-8 CARP CD 98-99

Dear Greg:

This letter constitutes the responses of the National Association of Broadcasters ("NAB") to the discovery requests submitted by the Program Suppliers on December 6, 2002, in connection with the above-referenced matter.

We repeat each of your written requests below, followed by our Response. To the extent we agree to provide underlying documents or data, we will produce non-privileged documents and data only, and will make such documents and data available for your inspection and copying, at your expense, at our offices on December 13, 2002.

INSTRUCTIONS

Please repeat each of the requests below on your response. Please provide a separate written response to each request. If you object to any request, state each basis for your objection in sufficient detail so as to permit adjudication of the validity of the objection, and produce any documents responsive to a portion of the request that is not objectionable. If you claim a document is "privileged," please state every fact supporting your claim of privilege. The term "underlie" has the same meaning as in 37 C.F.R. § 251.45(c), and includes, without limitation, all

documents upon which the witness relied in making his or her statement and all documents which verify bottom-line numbers.

The term "document" means and includes all materials comprehended within the description of the term "document" contained in Rule 34 of the Federal Rules of Civil Procedure and means the original and all drafts of a writing, as that term is defined by Rule 1001 of the Federal Rules of Evidence, including, without limitation, all written, recorded, graphic or photographic matter, however produced or reproduced, of every kind and description in your actual or constructive possession, custody, care or control pertaining in any manner to the subject matter indicated and includes, without limiting the generality of the foregoing, originals (or copies where originals are not available) and drafts, all papers, letters, notes, memoranda, correspondence, telegrams, cables, photographs, microfilm, prints, recordings, transcriptions, blueprints, drawings, paper, books, accounts, objects, notes or sound recordings of any type of personal or telephone conversations or meetings or conferences, minutes of directors or committee meetings, other minutes, interoffice communications or correspondence, reports, studies, written forecasts, projects, analyses, contracts, licenses, invoices, charge slips, expense account reports, hotel charges, receipts, agreements, ledgers, journals, books of account, vouchers, bank checks, freight bills, working papers, drafts, statistical records, cost sheets, abstracts of bids, stenographers' notebooks, calendars, appointment books, telephone slips, diaries, time sheets or logs, job or transaction files, computer printouts or papers similar to any of the foregoing however denominated. A draft or non-identical copy is a separate document within the meaning of this term. The term "document" also refers to electronic records in the form of electronic mail, computer files and the like without regard to whether the electronic record exists in printed form.

RESPONSE: We respectfully decline to accommodate your detailed special "Instructions" and definitions. We further object generally to your requests that purport to require the provision of information rather than the production of documents or data underlying specific testimony. We will respond in accordance with CARP Rules and rulings.

DISCOVERY REQUESTS

TESTIMONY OF RICHARD V. DUCEY

- A. Please provide all documents and source material that underlie, support, or form the basis of, any and all facts, conclusions, and/or opinions contained in Richard V. Ducey's testimony.

RESPONSE: We object to these broad, nonspecific discovery requests, on the ground that the requesting party must identify the factual assertions for which underlying documents are sought.

- B. Please provide all material identified in 37 C.F.R. §§ 251.48(e) and (f) relating to any studies, analyses, and statistical studies contained in Mr. Ducey's testimony, including sample surveys, econometric investigations, experimental analyses, and studies involving statistical methodology.

RESPONSE: We object to these broad, nonspecific discovery requests, on the ground that the requesting party must identify the factual assertions for which underlying documents are sought.

- C. Please provide responses to the following specific discovery requests:
1. Page 1, paragraph 1: Please provide all documents that show the type of "entity" that SpectraRep is and that identify the interest holders in SpectraRep.

RESPONSE: We object on the grounds that CARP rules do not require production of such documents, that the information relates to the witness's background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony.

2. Page 1, paragraph 1: Please provide all documents that show the type of "entity" that the BIA Financial Network is, and that identify the interest holders in the BIA Financial Network.

RESPONSE: We object on the grounds that CARP rules do not require production of such documents, that the information relates to the witness's background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony.

3. Page 2, carryover paragraph: Please identify the "editorial and review boards of several scholarly journals and organizations" on which you serve.

RESPONSE: We object on the grounds that CARP rules require only the production of underlying documents, that the requested information relates to the witness's background and credentials, and that such information does not constitute documents underlying specific factual assertions made in the witness's testimony. Please also refer to the attachment to Dr. Ducey's testimony.

4. Page 2, carryover paragraph: Please identify and list the "undergraduate and graduate courses" which you have taught.

RESPONSE: We object on the grounds that CARP rules require only the production of underlying documents, that the requested information relates to the witness's background and credentials, and that such information does not constitute documents underlying specific factual assertions made in the witness's testimony. Please also refer to the attachment to Dr. Ducey's testimony.

5. Page 2, carryover paragraph: Please identify and list the "industry panels, seminars and speeches on research methodology. statistical analysis, telecommunication technology and strategic marketing" which you have conducted.

RESPONSE: We object on the grounds that CARP rules require only the production of underlying documents, that the requested information relates to the witness's background and credentials, and that such information does not constitute documents underlying specific factual assertions made in the witness's testimony. Please also refer to the attachment to Dr. Ducey's testimony.

6. Page 2, paragraph 2: Please identify and list the "subscriber surveys with various cable operators" which you have reviewed.

RESPONSE: We object on the grounds that CARP rules require only the production of underlying documents, that the requested information relates to the witness's background and credentials, and that such information does not constitute documents underlying specific factual assertions made in the witness's testimony. Please also refer to the attachment to Dr. Ducey's testimony.

7. Page 2, paragraph 2: Please identify, list, and provide the "subscriber surveys" which you "had access to" as part of your "academic research and industry consulting."

RESPONSE: We object on the grounds that CARP rules require only the production of underlying documents, that the requested documents and information relate to the witness's background and credentials, and that such documents and information do not constitute documents underlying specific factual assertions made in the witness's testimony. Please also refer to the attachment to Dr. Ducey's testimony.

8. Page 2, paragraph 2: Please identify, list, and provide the following items with which you state you "continued to monitor and study the cable industry:"
 - a. Industry trade press;
 - b. Academic research.

RESPONSE: We object on the grounds that CARP rules require only the production of underlying documents, that the requested documents and information relate to the witness's background and credentials, and that such documents and information do not constitute documents underlying specific factual assertions made in the witness's testimony. Please also refer to the attachment to Dr. Ducey's testimony.

9. Page 2, paragraph 2: Please identify and list the "professional colleagues" with whom you met as you: "continued to monitor and study the cable industry."

RESPONSE: We object on the grounds that CARP rules require only the production of underlying documents, that the requested information relates to the witness's background and credentials, and that such information does not constitute documents underlying specific factual assertions made in the witness's testimony. Please also refer to the attachment to Dr. Ducey's testimony.

10. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 4, paragraph 1: "NAB is presenting what I believe is the most comprehensive survey to date of programming on the television stations carried as distant signals on Form 3 cable systems."

RESPONSE: We will provide documents underlying the specified statement.

11. Page 4, paragraph 1: Please provide the "study" referred to in this paragraph.

RESPONSE: See NAB 1998-1999 Exhibit 10.

12. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 5, paragraph 1: "Between 1992 and 1999, cable increased its subscribership from 61.5% of U.S. television households (57.2 million households) to 68.0% (68.5 million households), according to Nielsen Media Research.

RESPONSE: We will provide documents underlying the specified statement.

13. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 5, paragraph 1: "Between those two years, basic cable subscription fees grew at an even greater rate, and also increased as a share of total cable system revenues."

RESPONSE: We will provide documents underlying the specified statement.

14. Please provide all documents that underlie, and the documents to which you referred to form the basis of, Page 5, paragraph 1 Table 1. Include in your response the actual web page relied upon and the date on which you visited that web page.

RESPONSE: We will provide documents underlying the specified table. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

15. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 6, paragraph 1: "Cable operators continued during 1992-1999 to use more

sophisticated techniques in creating program offerings by arranging channels into bundles sold as differently priced tiers."

RESPONSE: Dr. Ducey relied on his general knowledge and expertise.

16. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 6, paragraph 1: "But cable operators often offer other tiers containing bundles of additional programming services, sometimes including distant signals."

RESPONSE: Dr. Ducey relied on his general knowledge and expertise.

17. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 6, paragraph 2: "The cable operators' objective in bundling and tiering their program offerings is 'yield maximization.'"

RESPONSE: Dr. Ducey relied on his general knowledge and expertise.

18. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 6, paragraph 2: "the economic problem to be solved by a cable operator is with what groupings and at what price points will the maximum revenue yield be generated from a group of subscribers and potential subscribers."

RESPONSE: Dr. Ducey relied upon his general knowledge and expertise.

19. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 7, carryover paragraph: "Simply put, if programming a subscriber particularly values is located on a higher tier, he or she must purchase both the basic (or "enhanced basic") and the higher tier to get what is most desired."

RESPONSE: Dr. Ducey relied upon his general knowledge and expertise.

20. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 7,

carryover paragraph: "a significant number of subscribers continue to subscribe only to these tiers."

RESPONSE: Dr. Ducey relied upon his general knowledge and expertise.

21. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 7, carryover paragraph: "The selection and positioning of distant signals is one of the factors that helps a cable operator maximize its basic revenue."

RESPONSE: Dr. Ducey relied upon his general knowledge and expertise.

22. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 7, paragraph 2: "For 'Form 3' cable systems, which pay by far the largest portion of the cable copyright royalties, success in maximizing their basic revenue also translates into higher royalty payments."

RESPONSE: We will provide documents underlying the specified statement.

23. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 8, carryover paragraph: that WTBS "was carried as a distant signal by about 95% of all Form 3 cable systems at the end of 1997...."

RESPONSE: We will provide the documents underlying the specified statement.

24. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 8, carryover paragraph: that WTBS "was carried by only about 0.4% of those systems as a distant signal in the first half of 1998."

RESPONSE: We will provide documents underlying the specified statement.

25. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 8, carryover paragraph: "Most systems apparently continued to carry the

station as a direct-licensed cable network, since its overall coverage stayed roughly constant between 1997 and 1998, at about 97% of all U.S. households with multichannel service."

RESPONSE: We will provide documents underlying the specified statement.

26. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 8, paragraph 1: "First, it reduced the overall amount of royalties paid for distant signals by tens of millions of dollars...."

RESPONSE: We will provide documents underlying the specified statement.

27. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 8, paragraph 1: "the incidence of carriage of independent stations by Form 3 systems plummeted in 1998, going from a high of about 5,000 total incidents in 1992 (an "incident" is counted for each case of a cable system carrying each distant signal) to about 2,300 in 1999."

RESPONSE: We will provide documents underlying the specified statement.

28. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 8, paragraph 1: "it becomes clear that the great majority of this change in the configuration of the distant signal universe was because of the termination of distant signal carriage of WTBS."

RESPONSE: We will provide documents underlying the specified statement.

29. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 8, paragraph 2: "The switch was anticipated to generate significantly more in additional revenue to Turner Broadcasting System (TBS) through subscriber fees collected directly from the cable operators than had been paid for all of WTBS's carriage through the CARP process." Please identify in your response the document referred to in footnote 2.

RESPONSE: We will provide documents underlying the specified statement.

30. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 9, carryover paragraph: "this resulted in rate hikes of as large as 400% to some cable operators." Please provide in your response the document referred to in footnote 3.

RESPONSE: We will provide documents underlying the specified statement.

31. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 9, paragraph 1: "WTBS's programming was more heavily weighted towards syndicated series, movies, and sports programs and had less station-produced and devotional programming than the rest of the distant signal universe."

RESPONSE: We will provide data underlying the specified statement in electronic form.

32. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 9, paragraph 1: "it was the most widely carried distant signal by far...."

RESPONSE: We will provide documents underlying the specified statement.

33. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 9, paragraph 1: "and represented a substantial amount of the total programming purchased by cable operators through the distant signal compulsory license."

RESPONSE: We will provide data underlying the specified statement in electronic form.

34. Page 9 paragraph 2: Please identify and provide the study conducted by BIA Financial Network referred to in this paragraph.

RESPONSE: Please see NAB 1998-1999 Exhibit 10.

35. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 9, paragraph 2: "to the best of my knowledge, it provides the most comprehensive empirical record of the programming that was actually on the distant signals carried by Form 3 cable systems, classified by claimant categories for the appropriate time frames." Please include in your response the specific documents or records to which the study referred to in this sentence was compared.

RESPONSE: We will provide documents underlying the specified statement. Please also see NAB 1998-1999 Exhibit 10.

36. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 10, paragraph 1: "The scope of the study was enormous, covering millions of programs aired on 126 days across three years by over 600 U.S. commercial stations carried as distant signals on Form 3 cable systems, in addition to accounting for the programming time of between 160 and 200 educational, Canadian, Mexican, and low-power stations also carried during 1992, 1998, and 1999." In your response, please include the documents that underlie the following specific references or phrases:
- a. "millions of programs;"
 - b. "over 600 U.S. commercial stations carried as distant signals on Form 3 cable systems;" and
 - c. "the programming time of between 160 and 200 educational, Canadian, Mexican, and low-power stations also carried during 1992, 1998, and 1999."

RESPONSE: Please see NAB 1998-1999 Exhibit 10.

37. Page 10, paragraph 2: Please provide all documents that underlie or refer to the "summary results" referred to in this paragraph.

RESPONSE: Please see NAB 1998-1999 Exhibit 10.

38. Please provide all documents that underlie, and the documents to which you referred to form the basis of, Table 2 on Page 10, paragraph 2. Include in your response the source of data for Table 2 and the statistical error estimates associated with that data.

RESPONSE: Please see NAB 1998-1999 Exhibit 10.

39. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 10, paragraph 3: "The percentages in Table 2 represent the relative amount of *distant signal program minutes* accruing to each category in the Form 3 part of the distant signal universe."

RESPONSE: Please see NAB 1998-1999 Exhibit 10.

40. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 10, paragraph 3: "The final percentage measures, which take into account both the number of programming minutes and the number of subscribers who had access to the stations that aired the programs, represent the relative amounts of non-network distant signal programming in each category that were actually available to Form 3 cable subscribers."

RESPONSE: Please see NAB 1998-1999 Exhibit 10.

41. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 11, paragraph 1: "For 1992, 8.8% of all distant signal programming time represented programs in the 'Commercial TV' claimant category represented by NAB."

RESPONSE: Please see NAB 1998-1999 Exhibit 10.

42. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 11, paragraph 1: "In 1998/1999, 'Commercial TV' distant signal program minutes accounted for 12.2% of the total number of such minutes."

RESPONSE: Please see NAB 1998-1999 Exhibit 10.

43. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 11, paragraph 3: "the removal of WTBS from the pool reduced the copyright payments paid into the distribution fund by cable operators and therefore the total fund is reduced."

RESPONSE: We will provide documents underlying the specified statement.

44. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 11, paragraph 4: "In 1992, WTBS carried a range of types of programming."

RESPONSE: We will provide data underlying the specified statement in electronic form.

45. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 11, paragraph 4: "WTBS was the most widely carried distant signal."

RESPONSE: We will provide documents underlying the specified statement.

46. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 11, paragraph 4: "its particular mix of programming heavily weighted the overall distribution of program percentages across claimant categories."

RESPONSE: We will provide data underlying the specified statement in electronic form.

47. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 11, paragraph 4: "to the extent WTBS differed from the programming mix of the average station carried as a distant signal, it *heavily influenced the overall program category results*." Please include in your response all documents that underlie or to which you referred to in order to form the definition of the phrase "average station."

RESPONSE: We will provide data underlying the specified statement in electronic form.

48. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 11, paragraph 5: "The difference in the mix of the programming in the distant signal marketplace with and without the presence of WTBS is a major explanation for the changing configuration of the distant signal program category data in table 2."

RESPONSE: Please see NAB 1998-1999 Exhibit 6. We will provide data underlying the specified statement in electronic form.

49. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 12, paragraph 1: "Because the total size of the distant signal programming universe decreased when WTBS made its conversion...."

RESPONSE: We will provide data underlying the specified statement in electronic form.

50. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 12, paragraph 1: "PBS and Canadian programming, which stayed at a relatively constant level of carriage between 1992 and 1998-1999, now represents a larger relative percentage of the programming universe."

RESPONSE: We will provide documents underlying the specified statement. Please also see NAB 1998-1999 Exhibit 10.

51. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 12, paragraph 2: "we see that the 'Program Suppliers' category represents virtually all of the corresponding drop, from 77.9% in 1992 to 62.5% in 1999."

RESPONSE: Please see NAB 1998-1999 Exhibit 10.

52. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 12,

paragraph 2: "This is again heavily affected by WTBS's being taken out of the programming mix...."

RESPONSE: Please see NAB 1998-1999 Exhibit 6. We will provide data underlying the specified statement in electronic form.

53. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 12, paragraph 2: "86.6% of WTBS's programming in 1992 consisted of syndicated programs and movies, compared with 74.3% of the non-network programming time across all the other stations carried as distant signals."

RESPONSE: We will provide data underlying the specified statement in electronic form.

54. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 12, paragraph 2: "WTBS was a very significant factor in the Program Suppliers share for many years."

RESPONSE: We will provide documents underlying the specified statement.

55. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 13, paragraph 1: "there was a substantial change in the distant signal program marketplace between 1992 and 1998-1999." Please include in your response any underlying documents or documents to which you referred as to:
- a. the "change" itself; and
 - b. how such change "affects different program categories differently."

RESPONSE: Please see NAB 1998-1999 Exhibit 10.

56. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 13, paragraph 1: "The evidence compels an increase in the royalty share of

the Commercial Television category and a decrease in the Program Suppliers share."

RESPONSE: Dr. Ducey relied on his general knowledge and expertise.

57. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 13, paragraph 2: that station produced news represents "the great majority of the Commercial Television programming time."

RESPONSE: Dr. Ducey relied on his general knowledge and expertise. Please also see data underlying NAB 1998-1999 Exhibit 10, which will be produced in response to Requests directed to Dr. Fratrik.

58. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 13, paragraph 2: "Another significant category is sports-related programs, such as coaches' shows, pre-and post-game shows, and specials about home teams" Please include in your response all underlying documents and the documents to which you referred, associated with the following:
- a. "coaches' shows;"
 - b. "pre- and post-game shows;" and
 - c. "specials about home teams."

RESPONSE: Dr. Ducey relied on his general knowledge and expertise. Please also refer to his prior testimony, which has been incorporated by reference into this proceeding.

59. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 13, paragraph 2: "distant carriage of non-superstations is generally 'clustered' within regions around the home city of the distant station."

RESPONSE: Dr. Ducey relied on his general knowledge and expertise. Please also refer to his prior testimony, which has been incorporated by reference into this proceeding, as well as the testimony of Laurence J. DeFranco.

60. Page 13, paragraph 3: Please provide the "study" and the documents underlying the study referred to in the second sentence of paragraph 3.

RESPONSE: Please refer to the testimony of Laurence J. DeFranco.

61. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 13, paragraph 3: "Form 3 instances of carriage within 150 miles of the home city of the station being carried rose to 89.2% in 1998 and 1999."

RESPONSE: Please refer to the testimony of Laurence J. DeFranco.

62. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 13, paragraph 3: "This was up from 87.6% in 1992 and 86.5% in 1989."

RESPONSE: Please refer to the testimony of Laurence J. DeFranco.

63. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 13, paragraph 3: "because superstation carriage represented a lower proportion of overall distant carriage as a result of the WTBS conversion, the proportion of overall carriage within 150 miles rose substantially."

RESPONSE: Dr. Ducey relied on his general knowledge and expertise. Please also refer to NAB 1998-1999 Exhibits 3-4.

64. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 14, carryover paragraph: "an even larger proportion of the distant carriage in 1998-1999 was within the relatively closer-in region where news programming about the distant station's home city would be of greater relative interest."

RESPONSE: Dr. Ducey relied on his general knowledge and expertise. Please also refer to NAB 1998-1999 Exhibits 3-4.

65. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 14, paragraph 1: "NAB is providing the Panel with the kind of

comprehensive quantitative evidence that is most directly useful in determining royalty share." Please include in your response all documents that underlie the definition of the phrases "comprehensive" and "most directly useful in determining royalty share."

RESPONSE: Please refer to Dr. Rosston's testimony.

66. Page 14, paragraph 1: Please identify and list the "evidence about 26 stations and 44 different programs" referred to in this paragraph.

RESPONSE: Please refer to Dr. Ducey's prior testimony, which has been incorporated by reference into this proceeding.

67. Page 14, paragraph 1: Please provide a copy of the full-length program of each excerpt referred to in the last sentence of this paragraph.

RESPONSE: We will make available for your review at our offices a copy of videotapes from which the excerpts presented on Exhibit 8 were taken.

68. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 14, paragraph 2: "that is retransmitted within a relatively close-in-area."

RESPONSE: Please see NAB 1998-1999 Exhibit 12.

69. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 14, paragraph 2: "The format of this program is a typical daytime magazine show, often with a daily theme but with several topics covered in each episode."

RESPONSE: Dr. Ducey relied on his general knowledge and expertise.

70. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 14, paragraph 3: "In the 'Pepper and Friends' episode that aired on March 18, 1998, the theme was 'Child and Health Care Week.'"

RESPONSE: Please see NAB 1998-1999 Exhibit 8.

71. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 15, paragraph 1: "This station is carried as a distant signal by just a few relatively nearby cable systems."

RESPONSE: Please see NAB 1998-1999 Exhibit 12.

72. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 15, paragraph 1: "all of them within about 100 miles of Columbia."

RESPONSE: Please see NAB 1998-1999 Exhibit 12.

73. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 16, paragraph 1: "the Chicago superstation that is carried around the country."

RESPONSE: Dr. Ducey relied on his general knowledge and expertise.

74. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 16, paragraph 1: "It is a program that establishes a people-to-people connection that transcends the geographic origin of the station or the show."

RESPONSE: Dr. Ducey relied on his general knowledge and expertise. Please also refer to NAB 1998-1999 Exhibit 8.

75. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 16, paragraph 2: "Again, what may have been a 'local' news story about a crime, conviction, and later release, is developed and presented in a way that has interest beyond the City of Chicago itself."

RESPONSE: Dr. Ducey relied on his general knowledge and expertise. Please also refer to NAB 1998-1999 Exhibit 8.

76. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 17

paragraph 2: "Key to the analysis is the availability of the comprehensive programming information from the BIAfn study."

RESPONSE: Please see NAB 1998-1999 Exhibit 10.

77. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 17, paragraph 3: "A study that analyzes the distant signal purchases made by cable operators in 1998 and 1999 properly focuses on cable operator behavior rather than subscriber viewing."

RESPONSE: Dr. Ducey relied on his general knowledge and expertise. Please also refer to Dr. Ducey's prior testimony, which has been incorporated by reference into this proceeding.

78. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 18, carryover paragraph: "The results of the study establish that the Commercial Television award for 1998-1999 should be significantly higher than its 1992 share."

RESPONSE: Dr. Ducey relied on his general knowledge and expertise. Please also refer to Dr. Rosston's testimony.

79. NAB Exhibit 1: Please provide all documents that underlie the data reported in this exhibit. Include in your response the source of data for the Exhibit, the statistical error estimates associated with that data, and the methodology utilized in compiling that data and /or this exhibit.

RESPONSE: We will provide documents underlying the exhibit. We object to the remaining portions of this request as being outside the scope of CARP Rules and rulings.

80. NAB Exhibit 2: Please provide all documents that underlie the data reported in this exhibit. Include in your response the source of data for the Exhibit, the statistical error estimates associated with that data, and the methodology utilized in compiling that data and /or this exhibit.

RESPONSE: We will provide documents underlying the exhibit. We object to the remaining portions of this request as being outside the scope of CARP Rules and rulings.

81. NAB Exhibit 3: Please provide all documents that underlie the data reported in this exhibit. Include in your response the source of data for the Exhibit, the statistical error estimates associated with that data, and the methodology utilized in compiling that data and /or this exhibit.

RESPONSE: We will provide documents underlying the exhibit. We object to the remaining portions of this request as being outside the scope of CARP Rules and rulings.

82. NAB Exhibit 4: Please provide all documents that underlie the data reported in this exhibit. Include in your response the source of data for the Exhibit, the statistical error estimates associated with that data, and the methodology utilized in compiling that data and /or this exhibit.

RESPONSE: We will provide documents underlying the exhibit. We object to the remaining portions of this request as being outside the scope of CARP Rules and rulings.

83. NAB Exhibit 5: Please provide all documents that underlie the data reported in this exhibit. Include in your response the source of data for the Exhibit, the statistical error estimates associated with that data, and the methodology utilized in compiling that data and /or this exhibit.

RESPONSE: Please refer to NAB 1998-1999 Exhibit 10.

84. NAB Exhibit 6: Please provide all documents that underlie the data reported in this exhibit. Include in your response the source of data for the Exhibit, the statistical error estimates associated with that data, and the methodology utilized in compiling that data and /or this exhibit.

RESPONSE: We will provide data underlying the exhibit in electronic form. We will provide statistical error estimates for the data presented in the exhibit.

85. NAB Exhibit 7: Please provide all documents that underlie the data reported in this exhibit. Include in your response the source of data for the Exhibit, the statistical error estimates associated with that data, and the methodology utilized in compiling that data and /or this exhibit.

RESPONSE: We will provide data underlying the exhibit in electronic form. We object to the remaining portions of this request as being outside the scope of CARP Rules and rulings.

TESTIMONY OF MARCELLUS ALEXANDER, JR.

- A. Please provide all documents and source material that underlie, support, or form the basis of, any and all facts, conclusions, and/or opinions contained in Marcellus Alexander Jr.'s testimony.

RESPONSE: We object to these broad, nonspecific discovery requests, on the ground that the requesting party must identify the factual assertions for which underlying documents are sought.

- B. Please provide all material identified in 37 C.F.R. §§ 251.48(e) and (f) relating to any studies, analyses, and statistical studies contained in Mr. Alexander's testimony, including sample surveys, econometric investigations, experimental analyses, and studies involving statistical methodology.

RESPONSE: We object to these broad, nonspecific discovery requests, on the ground that the requesting party must identify the factual assertions for which underlying documents are sought.

- C. Please provide responses to the following specific discovery requests:
1. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 1, paragraph 1: "Prior to joining the NAB, I was involved in television station management at KYW-TV in Philadelphia, Pennsylvania and WJZ-TV in Baltimore, Maryland."

RESPONSE: Mr. Alexander relied on his personal knowledge and experience.

2. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 2, paragraph 1: "Both stations produced and aired newscasts and other programs that had a widespread appeal." Please include in your response all documents underlying the definition of "widespread approval."

RESPONSE: Mr. Alexander relied on his personal knowledge and experience.

3. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 2, paragraph 2: "During my tenure as general Manager at KYW, which included 1999, I helped to improve the station's news by, among other things, focusing on the news content and presentation and improving the programs' graphics."

RESPONSE: Mr. Alexander relied on his personal knowledge and experience.

4. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 2, paragraph 3: "I am aware that the station was carried as a distant signal in 1999 by a number of cable systems in smaller television markets in upstate Pennsylvania, as well as in New Jersey and Delaware." In your response, please identify and list the cable systems in smaller television markets and to which you refer.

RESPONSE: Data identifying the systems that carried the station will be provided in electronic form in response to requests directed to Dr. Fratrik.

5. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 2, paragraph 3: "Not only is the quality of the KYW newscast likely to be better than the newscasts available from local stations in those markets, but the subject matter of the KYW newscasts will also be of interest to many of those cable subscribers."

RESPONSE: Mr. Alexander relied on his personal knowledge and experience.

6. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 2, paragraph 3: "many issues confronting the city have regional and state-wide effects."

RESPONSE: Mr. Alexander relied on his personal knowledge and experience.

7. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 3, carryover paragraph: "the regional economy, educational issues, and public funding questions KYW covered in its news have a broader impact than just in the city and suburbs."

RESPONSE: Mr. Alexander relied on his personal knowledge and experience.

8. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 3, paragraph 1: "KYW produced (and still produces) sports related programs on Philadelphia teams, which, because of the regional loyalties that pro teams generate, are of interest beyond the local area" In your response, please identify and list each "sports related program" referred to that is of interest beyond the local area.

RESPONSE: Mr. Alexander relied on his personal knowledge and experience.

9. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 3, paragraph 2: "In addition, the station provided news coverage of high profile court cases, investigations, and other events that are of interest to a wide area" In your response, please identify and list each item of coverage referred to, the dates on which such coverage aired, and the communities to which such cases were of interest.

RESPONSE: Mr. Alexander relied on his personal knowledge and experience.

10. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 3, paragraph 2: "And KYW also produced features and series in its newscasts that were not limited in their geographic appeal." In your response, please identify and list each feature and series referred to, the dates on which those features and series aired, and the communities to which the features and series were of interest.

RESPONSE: Mr. Alexander relied on his personal knowledge and experience.

11. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 4, carryover paragraph: "And its award-winning news features 'Consumer Alert' and 'Can You Believe It?' provided consumer product information of widespread interest." In your response, please identify and list the dates on which the news features referred to aired, and include all documents that underlie and the documents to which you referred to form the definition of the phrase "widespread interest."

RESPONSE: Mr. Alexander relied on his personal knowledge and experience.

12. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 4, paragraph 1: "I am aware that WJZ was carried by cable systems from one end of the state of Maryland to the other, in addition to systems in DC, Delaware, Pennsylvania, and even West Virginia." In your response, please identify and list each cable system referred to, and the dates of carriage.

RESPONSE: Data identifying the systems that carried the station will be provided in electronic form in response to requests directed to Dr. Fratrik.

13. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 5, carryover paragraph: "the station covered stories about problems in the Baltimore public schools that had broad ramifications for school budgets and school governance." In your response, please identify and list the dates on which the stories referred to aired, and include all

documents that underlie and the documents to which you referred to form the definition of the phrase "broad ramifications."

RESPONSE: Mr. Alexander relied on his personal knowledge and experience.

14. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 5, paragraph 1: "WJZ's broadcasts of sports and sports-related programming also were of interest to fans outside the station's immediate market." In your response, please identify and list each "sports related program" referred to, the dates on which those programs aired, and the "fans" outside of WJZ's market to which the programs were of interest.

RESPONSE: Mr. Alexander relied on his personal knowledge and experience.

15. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 5, paragraph 1: "These programs would appeal to fans of the teams throughout the region."

RESPONSE: Mr. Alexander relied on his personal knowledge and experience.

16. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 5, paragraph 1: that WJZ "provided coverage of other sports news that was of more than purely local interest." In your response, please identify and list the "other sports news" referred to that was of more than purely local interest, and the dates on which such programs aired.

RESPONSE: Mr. Alexander relied on his personal knowledge and experience.

17. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 5, paragraph 2: "cable subscribers in smaller markets outside of KYW's and WJZ's immediate markets value having access to KYW's and

WJZ's news and other station produced programming." In your response, please provide any data underlying the value ascribed by cable subscribers to KYW's and WJZ's coverage.

RESPONSE: Mr. Alexander relied on his personal knowledge and experience.

18. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 5, paragraph 2: "Among the key reasons for this fact are: production values, more extensive coverage of news stories of regional and state-wide interest, and programming about professional sports teams that have a broad regional following." In your response, please provide any data underlying or referred to in forming this statement.

RESPONSE: Mr. Alexander relied on his personal knowledge and experience.

19. NAB Exhibit 9: Please provide all documents that underlie the data reported in this exhibit. Include in your response the source of data for the Exhibit.

RESPONSE: Data identifying the programs will be provided in electronic form in response to requests directed to Dr. Fratrik.

TESTIMONY OF MARK R. FRATIK

- A. Please provide all documents and source material that underlie, support, or form the basis of, any and all facts, conclusions, and/or opinions contained in Mark R. Fratrik's testimony.

RESPONSE: We object to these broad, nonspecific discovery requests, on the ground that the requesting party must identify the factual assertions for which underlying documents are sought.

- B. Please provide all material identified in 37 C.F.R. §§ 251.48(e) and (f) relating to any studies, analyses, and statistical studies contained in Mr. Fratrik's testimony, including sample surveys, econometric investigations, experimental analyses, and studies involving statistical methodology.

RESPONSE: We object to these broad, nonspecific discovery requests, on the ground that the requesting party must identify the factual assertions for which underlying documents are sought.

C. Please provide responses to the following specific discovery requests:

1. Page 1, paragraph 1: Please provide all documents that show the type of "entity" that the BIA Financial Network is, and that identify the interest holders in the BIA Financial Network.

RESPONSE: We object on the grounds that CARP rules do not require production of such documents, that the information relates to the witness's background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony.

2. Page 2, paragraph 3: Please provide the "study" referred to in this paragraph.

RESPONSE: Please see NAB 1998-1999 Exhibit 10.

3. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 2, paragraph 4: "we contracted with TVData to provide us with program schedules for all of the commercial, full-power television stations, and the on-air time for all of the Canadian and Educational stations that were carried as distant signals on Form 3 cable systems." In your response, please provide the TVData data in the form provided to you by TVData.

RESPONSE: We will provide the specified TVData data in electronic form.

4. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 3, carryover paragraph: "we randomly selected days in each of the three years to obtain a representative sample of the programming in those years."

RESPONSE: We will provide documents underlying the specified statement.

5. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 3, carryover paragraph: "We separately obtained summary information on the types of programming aired on the Canadian stations that were carried as distant signals on Form 3

cable systems." Include in your response the source of data for the summary information.

RESPONSE: We will provide documents underlying the specified statement.

6. Please provide all documents that underlie and which were referred to in forming the definition of the phrase "various categories of programming" referred to in the first sentence of NAB Exhibit 10, page 1, paragraph 1

RESPONSE: Please refer to NAB 1998-1999 Exhibit 10.

7. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 1, paragraph 2: "We evaluate the programming carried on these television stations for a representative random selection of days during these three years." Include in your response all documents that underlie or which were referred to in forming the definition of the phrase "representative random selection of days" referred to in this sentence.

RESPONSE: We will provide documents underlying the specified statement.

8. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 2, paragraph 1: "we reviewed the carriage data provided by Cable Data Corporation, the standard source for such information in these proceedings."

RESPONSE: We will provide data referred to in the specified statement in electronic form.

9. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 2, paragraph 1: "We also obtained distant subscriber numbers for each of those stations from Cable Data Corporation for use in our analysis."

RESPONSE: We will provide data referred to in the specified statement in electronic form.

10. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 2,

paragraph 2: "we obtained schedule data for a randomly selected representative collection of days for these three years." Include in your response all documents that underlie or which were referred to in forming the definition of the phrase "randomly selected representative collection of days" referred to in this sentence.

RESPONSE: We will provide data referred to in the specified statement.

11. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 3, paragraph 1: "Of all the television stations that were carried as distant signals on Form 3 cable systems at any time during 1992, 612 were U.S. commercial, full-power television stations." Please include in your response the document referred to in footnote 2, and the date on which that web site was visited.

RESPONSE: We will provide data underlying the specified statement in electronic form. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

12. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 3, paragraph 1: "Correspondingly, in 1998 and 1999, 683 U.S. commercial full-power television stations were carried as distant signals by Form 3 cable systems for at least one half-year period during those years." Please include in your response a list of each station referred to in footnote 4, and all documents that underlie or which were referred to in forming the assumption described in footnote 4.

RESPONSE: We will provide data underlying the specified statement in electronic form. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

13. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 4, paragraph 2: "One other field, 'Qualifier 2' in TV Data's tables, included information as to whether the program was network delivered, and which network delivered that particular program, both of which were useful in our analysis."

RESPONSE: We will provide data underlying the specified statement in electronic form.

14. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 4, paragraph 2: "Finally, TVData was able to supply us with an additional field that indicated whether the program was syndicated."

RESPONSE: We will provide data underlying the specified statement in electronic form.

15. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 4, paragraph 3: "We obtained from WGN-TV its program schedule for the separate national feed that cable operators use for distant signal purposes for the randomly selected dates" Include in your response all documents that underlie or which were referred to in forming the definition of the phrase "randomly selected dates."

RESPONSE: We will provide documents the specified statement.

16. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 5, carryover paragraph: "and excluded from our analysis all of the substituted programs on the national feed." Include in your response all documents that underlie or which were referred to in forming the definition of the phrase "substituted programs."

RESPONSE: We will provide data underlying the specified Table in electronic form.

17. Please provide all documents that underlie, and the documents to which you referred to form the basis of, Table 1 on NAB Exhibit 10, page 5. Include in your response the source of data for Table 1 and the statistical error estimates associated with that data.

RESPONSE: We will provide data underlying the specified statement in electronic form. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

18. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 6, paragraph 1: "For Educational, Mexican, and Low-Power television stations the total hours of programming aired on the distant signals for these stations are assigned to their respective program categories." Include in your response a list of the "distant signals" referred to in this sentence.

RESPONSE: We will provide data underlying the specified statement in electronic form. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

19. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 6, paragraph 1: "we were provided with information detailing the source of those stations' programs in each of these three years."

RESPONSE: We will provide documents underlying the specified statement.

20. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 6, paragraph 1: "That time was distributed across three categories – Canadian, U.S., and Sports programming – that we used later to allocate to three claimant categories."

RESPONSE: We will provide documents underlying the specified statement.

21. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 6, paragraph 2: "For all of these four groups of television stations (Canadian, Educational, Mexican, and Low-Power), we obtained from TVData the start and end times for each of the randomly selected days."

RESPONSE: We will provide data underlying the specified statement in electronic form.

22. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 6, paragraph 2: "We then calculated the total number of minutes each of these stations was on air for each of these days."

RESPONSE: We will provide data underlying the specified statement in electronic form.

23. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 6, paragraph 1: "For each of the Canadian stations, we allocated these minutes across the three categories of programming and assigned those values to the respective claimant categories."

RESPONSE: We will provide data underlying the specified statement in electronic form.

24. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 9, paragraph 1: "All programs that were delivered by any of the three traditional networks (ABC, CBS, and NBC) were taken out of the analysis." Please identify and list each program referred to in this sentence, and include in your response an explanation of the methodology used to take out the network programs from your analysis.

RESPONSE: We will provide data underlying the specified statement in electronic form. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

25. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 9, paragraph 1: "All programs that were delivered by any of the non-traditional networks (Fox, Paxson, Telemundo, UPN, WB, and Univision) were initially placed in the Program Suppliers claimant category." In your response, please identify and list each program referred to in this sentence.

RESPONSE: We will provide data underlying the specified statement in electronic form. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

26. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 9, paragraph 1: "All programs that were listed by TVData as being the following types were placed into the Program Suppliers category." Please identify and list each program referred to in this sentence.

RESPONSE: We will provide data underlying the specified statement in electronic form. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

27. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 10, carryover paragraph: "All programs involving games of any of the major sports leagues (NBA, NFL, Major League Baseball, NHL, and College Baseball, Basketball, and Football games), including those previously placed in the Program Suppliers category, were placed in the Sports category." Please identify and list each program referred to in this sentence.

RESPONSE: We will provide data underlying the specified statement in electronic form. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

28. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 10, carryover paragraph: "All programs that were listed by TVData as being infomercial or animated were placed into the Program Suppliers category." Please identify and list each program referred to in this sentence.

RESPONSE: We will provide data underlying the specified statement in electronic form. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

29. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 10, carryover paragraph: "All programs that were listed as being aired on two or more different stations were placed into the Program Suppliers category." Please identify and list each program referred to in this sentence.

RESPONSE: We will provide data underlying the specified statement in electronic form. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

30. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 10, carryover paragraph: "All programs that had not already been assigned to any claimant category and that TVData indicated were syndicated were

placed into the Program Suppliers category." Please identify and list each program referred to in this sentence.

RESPONSE: We will provide data underlying the specified statement in electronic form. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

31. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 10, carryover paragraph: "All religious programs with titles that were included in a list of program titles provided by the Devotional Claimants were placed into the Devotional category." Please identify and list each program referred to in this sentence.

RESPONSE: We will provide documents and data underlying the specified statement in electronic form. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

32. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 10, carryover paragraph: "Programs that were not otherwise assigned to any other category, and that were broadcast by only a single station during the year in question, were assigned to the Commercial Television category, subject to further review." Please identify and list each program referred to in this sentence.

RESPONSE: We will provide data underlying the specified statement in electronic form. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

33. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 10, carryover paragraph: "Programs in the Commercial Television category and programs that had not already been assigned to any claimant category were reviewed, and when there were questions concerning the appropriate category they were placed into the Program Suppliers category." Please identify and list each program referred to in this sentence.

RESPONSE: We will provide data underlying the specified statement in electronic form. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

34. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 12, paragraph 2: "we calculated the percentage of all Form 3 distant signal subscribers that had access to each of the carried distant signals, including all commercial full-power, educational, Canadian, Mexican, and low-power stations." Include in your response the data sources utilized or referred to for this calculation, and the statistical error estimates associated with that data and/or calculation.

RESPONSE: We will provide data underlying the specified statement in electronic form. We object to the remaining portions of this request as being outside the scope of CARP Rules and rulings.

35. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 12, paragraph 3: "we first multiplied the duration of each U.S. commercial full-power station's program by that station's distant signal subscriber percentage." Include in your response the data sources utilized or referred to for this calculation, and the statistical error estimates associated with that data and/or calculation.

RESPONSE: We will provide data underlying the specified statement in electronic form. We object to the remaining portions of this request as being outside the scope of CARP Rules and rulings.

36. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at NAB Exhibit 10, page 12, paragraph 3: "The subscriber-weighted programming minutes of the different commercial stations were then grouped by programming type and summed." Include in your response the data sources utilized or referred to for this calculation, and the statistical error estimates associated with that data and/or calculation.

RESPONSE: We will provide data underlying the specified statement in electronic form. We object to the remaining portions of this request as being outside the scope of CARP Rules and rulings.

37. Please provide all documents that underlie, and the documents to which you referred to form the basis of, Table 3, NAB Exhibit 10, page 13, paragraph 1.

Include in your response the source of data for Table 3 and the statistical error estimates associated with that data.

RESPONSE: We will provide data underlying the specified statement in electronic form.

38. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the data reported at NAB Exhibit 10, Appendix 1. Include in your response the source of data for the appendix, and the methodology utilized in compiling that data.

RESPONSE: We will provide data underlying the Appendix in electronic form.

39. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the data reported at NAB Exhibit 10, Appendix 2. Include in your response the source of data for the appendix, and the methodology utilized in compiling that data.

RESPONSE: We will provide a copy of the document underlying the Appendix.

40. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the data reported at NAB Exhibit 10, Appendix 3. Include in your response the source of data for the appendix, and the methodology utilized in compiling that data.

RESPONSE: We will provide data underlying the Appendix in electronic form.

41. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the data reported at NAB Exhibit 10, Appendix 4. Include in your response the source of data for the appendix, the statistical error estimates associated with that data, and the methodology utilized in compiling that data.

RESPONSE: We will provide data underlying the Appendix in electronic form.

42. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the data reported at NAB Exhibit 10, Appendix

5. Include in your response a breakdown of the statistical error estimate associated with each programming category (Commercial TV, Devotional, Sports, Program Suppliers, Public Broadcasting, Low Power, Canadian, and Mexican).

RESPONSE: We will provide data underlying the Appendix statement in electronic form. Please also refer to NAB 1998-1999 Exhibit 10, Appendix 5.

TESTIMONY OF GREGORY L. ROSSTON

A. Please provide all documents and source material that underlie, support, or form the basis of, any and all facts, conclusions, and/or opinions contained in Gregory L. Rosston's testimony.

RESPONSE: We object to these broad, nonspecific discovery requests, on the ground that the requesting party must identify the factual assertions for which underlying documents are sought.

B. Please provide all material identified in 37 C.F.R. §§ 251.48(e) and (f) relating to any studies, analyses, and statistical studies contained in Mr. Rosston's testimony, including sample surveys, econometric investigations, experimental analyses, and studies involving statistical methodology.

RESPONSE: We object to these broad, nonspecific discovery requests, on the ground that the requesting party must identify the factual assertions for which underlying documents are sought.

C. Please provide responses to the following specific discovery requests:

1. Page 1, paragraph 2: Please identify and provide the "two books on telecommunications" which you have co-edited.

RESPONSE: We object on the grounds that CARP rules require only the production of underlying documents, that the requested documents and information relate to the witness's background and credentials, and that such documents and information do not constitute documents underlying specific factual assertions made in the witness's testimony. Please also refer to Appendix A to Dr. Rosston's testimony.

2. Page 1, paragraph 2: Please identify with specificity the "aspects of the cable television industry" you studied while at the FCC and since that time.

RESPONSE: We object on the grounds that CARP rules require only the production of underlying documents, that the requested information relates to the witness's background and credentials, and that such information does not constitute documents underlying specific factual assertions made in the witness's testimony. Please also refer to Appendix A to Dr. Rosston's testimony.

3. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at page 2, paragraph 3: "Cable systems try to maximize their profits by selling bundles of programming to their subscribers."

RESPONSE: Dr. Rosston relied upon his general knowledge and expertise.

4. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at page 2, paragraph 3: "The cable systems generate revenue principally from the monthly fees their subscribers pay for the programming packages to which they subscribe."

RESPONSE: Dr. Rosston relied upon his general knowledge and expertise. Please also refer to documents provided in response to requests directed to Dr. Ducey's testimony.

5. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at page 2, paragraph 3: "In addition, cable operators generate a supplemental stream of revenues from local advertising sold on some cable network channels."

RESPONSE: Dr. Rosston relied upon his general knowledge and expertise.

6. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at page 2, footnote 1: "In designating and implementing this study, I have been assisted by National Economic Research Associates (N/E/R/A), who worked under my direction and supervision." Include in your response the identity of individuals at N/E/R/A with whom you worked as well as the scope and description of work performed by those individuals.

RESPONSE: Dr. Rosston relied upon his personal knowledge to make the specified statement. We object to the remainder of the request in the ground that it does not seek the production of documents underlying factual statements in Dr. Rosston's testimony.

7. [NUMBER OMITTED IN REQUESTS.]

8. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at page 3, carryover paragraph: "To attract and retain subscribers, cable systems must provide programming bundles that are sufficiently attractive that customers are willing to pay for them."

RESPONSE: Dr. Rosston relied upon his general knowledge and expertise.

9. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at page 3, paragraph 1: "Against these revenue streams, cable systems have expenses for programming, system maintenance and upgrades as well as general selling and administrative expenses."

RESPONSE: Dr. Rosston relied upon his general knowledge and expertise.

10. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at page 3, paragraph 2: "the value of carrying these channels is principally in attracting and retaining subscribers, not in contributing to the supplemental advertising revenue stream."

RESPONSE: Dr. Rosston relied upon his general knowledge and expertise.

11. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at page 3, paragraph 2: "In fact, when people watch over-the-air channels, they are not watching the channels where the cable operator benefits from advertising sales, thus reducing the cable operator's potential revenue."

RESPONSE: Dr. Rosston relied upon his general knowledge and expertise.

12. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at page 4, paragraph 2: "Form 3

cable systems account for over 95 percent of the distant signal royalties in each of the four accounting periods."

RESPONSE: We will provide documents underlying the specified statement.

13. Please provide all documents that underlie, and the documents to which you referred to form the basis of, your statement at page 5, paragraph 2: "A well-accepted approach to quantify how economic variables are related is called regression analysis or econometric analysis."

RESPONSE: Dr. Rosston relied upon his general knowledge and expertise.

14. Please provide a copy of and identify the document referred to at page 5, footnote 3.

RESPONSE: We will provide the documents underlying the specified statement.

15. Please provide a copy of and identify the document referred to at page 6, footnote 6.

RESPONSE: We will provide a copy of the specified pages of the book cited there. If requested, we will arrange for the entire book to be available for review in our offices at a mutually convenient time.

16. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the simple regression model listed at page 7, paragraph 2.

RESPONSE: Dr. Rosston relied upon his general knowledge and expertise. We will provide data underlying the performance of the regression model, as requested in subsequent requests.

17. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the programming minutes carried via distant signals for the following categories of programming which are elements of the simple regression model listed at page 7, paragraph 2:

- a. Program Suppliers;
- b. Sports;

- c. Commercial TV;
- d. Public;
- e. Devotional;
- f. Canadian;
- g. Low Power; and
- h. Mexican.

RESPONSE: We will provide underlying data in electronic form.

18. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the "control factor" elements of the simple regression model listed at page 7, paragraph 2.

RESPONSE: We will provide underlying data in electronic form.

19. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statistical error estimates of the simple regression model listed at page 7, paragraph 2.

RESPONSE: We will provide underlying data in electronic form.

20. Please provide all documents that underlie and the documents to which you referred to calculate or perform calculations with respect to the simple regression model listed at page 7, paragraph 2.

RESPONSE: We will provide underlying data in electronic form.

21. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 9, paragraph 1: "we have developed a regression model that incorporates other factors that are important determinants of royalties." In your response, please include all underlying documents and documents to which you referred, pertaining to the following:

- a. number of subscribers on a system;
- b. number of channels carried on a system;
- c. count of local channels;
- d. controls for income;
- e. whether the system paid any royalties at the 3.75 rate;
- f. whether the system carries any partially distant signals and time.

RESPONSE: We will provide underlying data in electronic form.

22. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 9, paragraph 2: "Cable systems vary in size – some serve small communities whereas others serve large cities."

RESPONSE: Dr. Rosston relied upon his general knowledge and expertise.

23. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 9, paragraph 2: "a minute of programming on a system with a large subscriber base will likely have a different impact on royalties than the same minute of programming on a small system."

RESPONSE: Dr. Rosston relied upon his general knowledge and expertise. We will also provide a copy of a document underlying the specified statement.

24. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 9, paragraph 3: "Those systems that have a relatively large total number of channels are likely to charge more for a subscription than systems with a relatively small total number of channels producing a higher royalty fee...."

RESPONSE: Dr. Rosston relied upon his general knowledge and expertise.

25. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 9, paragraph 4: "Since the programming on distant signals is generally presented in a format most similar to the programming carried on local broadcast channels, the number of local claimants in a market may influence the number of distant signals carried by a cable system."

RESPONSE: Dr. Rosston relied upon his general knowledge and expertise.

26. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 10, paragraph 1: "The model accounts for differences in income across areas through inclusion of an

income measure." Please include in your response, documents underlying the differences in income and by income area.

RESPONSE: We will provide underlying data in electronic form.

27. Page 10, paragraph 1: please identify and list the "variables that control for the different time periods from which the observations are taken."

RESPONSE: We will provide underlying data in electronic form.

28. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 10, paragraph 1: "The income measure is the average household income in the television market in which the cable system operates."

RESPONSE: We will provide underlying data in electronic form.

29. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 10, paragraph 2: "some channels have different royalty rates that affect the total royalties."

RESPONSE: We will provide documents underlying the specified statement.

30. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 10, paragraph 2: "cable systems must pay a royalty rate of 3.75 percent of their gross revenues, which is higher than the basic rates."

RESPONSE: We will provide documents underlying the specified statement.

31. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 10, paragraph 2: "Other systems carry distant signals that are only distant for a portion of the systems subscribers."

RESPONSE: We will provide documents underlying the specified statement.

32. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the "royalties" model listed at page 11, carryover paragraph.

RESPONSE: We will provide underlying data in electronic form.

33. Please provide all documents that underlie and the documents to which you referred to in the "panel data" discussed at page 11, paragraph 1.

RESPONSE: We will provide underlying data in electronic form.

34. Please provide all documents that underlie and the documents to which you referred to in the "'random' effects model" discussed at page 11, paragraph 1.

RESPONSE: We will provide underlying data in electronic form.

35. Please provide all documents that underlie and the documents to which you referred to in the "'fixed' effects model" discussed at page 11, paragraph 1.

RESPONSE: We will provide underlying data in electronic form.

36. Please provide a copy of, and identify, the document referred to at page 11, footnote 8.

RESPONSE: We will provide a copy of the specified pages of the book cited there. If requested, we will arrange for the entire book to be available for review in our offices at a mutually convenient time.

37. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 12, paragraph 2: "Form 3 systems pay for a minimum of 1 DSE even if they carry less than 1 DSE."

RESPONSE: We will provide documents underlying the specified statement.

38. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 12, paragraph 2: "Of the Form 3 systems, 17.4% had zero DSEs and 8.3% had greater than zero but fewer than or equal to 0.75 DSEs during 1998-1999."

RESPONSE: We will provide underlying data in electronic form.

39. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 13, carryover paragraph: "This translates into estimating the regression for two different samples, one with all systems with $DSE > 0$ and one with $DSE > 0.75$"

RESPONSE: We will provide underlying data in electronic form.

40. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 13, paragraph 1: "We have used subscribers at the beginning of the period so that we do not have an 'endogeneity' problem."

RESPONSE: Dr. Rosston relied upon his general knowledge and expertise. We will provide underlying data in electronic form.

41. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 14, paragraph 1: "Explaining the levels of royalties sheds more light on the relationship than trying to explain the changes in royalties from period to period."

RESPONSE: Please refer to Dr. Rosston's testimony.

42. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 14, paragraph 2: "The regression coefficients give an estimate of the implicit price of a minute of programming in each of the categories."

RESPONSE: Dr. Rosston relied upon his general knowledge and expertise.

43. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 15, paragraph 1: "Others have looked at only those Form 3 systems that changed at least one of the distant signals."

RESPONSE: Please refer to the prior testimony of Dr. Besen, which has been incorporated by reference into this proceeding.

44. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 15, paragraph 1: "Looking

only at systems with changes in the amount of DSEs limits the data to 6.67% of the Form 3 systems."

RESPONSE: We will provide underlying data in electronic form.

45. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement located at page 15, footnote 12: "Of the total 7,529 observations, there were 502 observations where the DSE changed from the previous period."

RESPONSE: We will provide underlying data in electronic form.

46. Please provide all documents that underlie the following references at page 16, paragraph 1:
- a. data provided by NAB and compiled by Cable Data Corporation;
 - b. data provided by NAB and compiled by BIA Financial Network;
and
 - d. The process for combining the information from these two
databases (a and b)

RESPONSE: We will provide underlying data in electronic form.

47. Please provide all documents that underlie, and the documents to which you referred to form the basis of, Table 1 on Page 17, paragraph 1. Include in your response the source of data for Table 1 and the statistical error estimates associated with that data.

RESPONSE: We will provide underlying data in electronic form. We object to the remaining portions of this request as beyond the scope of CARP Rules and rulings.

48. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 18, paragraph 1: "Most of the coefficients are statistically significant and most have predicated signs."

RESPONSE: Please refer to Dr. Rosston's testimony at Table 2.

49. Please provide all documents that underlie, and the documents to which you referred to form the basis of, Table 2 on Page 19, paragraph 1. Include in

your response the source of data for Table 2 and the statistical error estimates associated with that data.

RESPONSE: We will provide underlying data in electronic form.

50. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 21, paragraph 2: "To a large degree, this may be due to the fact that many of the variables, which are measured at the system level, do not vary much over time and are, therefore, closely related to the fixed measures, which are system specific and which also do not vary over time."

RESPONSE: Dr. Rosston relied upon his general knowledge and expertise. We will provide underlying data in electronic form.

51. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 21, footnote 15: "The coefficient on the Canadian minutes is also negative but it is not statistically significant."

RESPONSE: Please refer to Dr. Rosston's testimony at Table 2.

52. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 21, footnote 16: "To make this comparable to the fixed effects regression, income and time trend controls are omitted because they are controlled for in the fixed effects specification."

RESPONSE: Dr. Rosston relied upon his general knowledge and expertise. We will provide underlying data in electronic form..

53. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 21, footnote 17: "The statistical significance of the coefficients would be expected to decrease when moving from the basic model to the random effects model, as observed, because of the way the model incorporates the information about the panel data."

RESPONSE: We will provide documents underlying the specified statement.

54. Please provide all documents that underlie, and the documents to which you referred to form the basis of, Table 3 on Page 23, paragraph 1. Include in your response the source of data for Table 3 and the statistical error estimates associated with that data.

RESPONSE: We will provide the underlying data in electronic form. Please also refer to Dr. Rosston's testimony at Table 2.

55. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at Appendix B1, paragraph 1: "Cable Data Corporation (CDC) provided a call sign database that contains 100,272 observations consisting of each television station that appeared on each Form 3 cable system during the four accounting period in 1998 and 1999...."

RESPONSE: We will provide underlying data in electronic form.

56. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at Appendix B1, paragraph 1: "This data set was merged (by accounting period and call sign) with data provided by BIA Financial Network containing minutes of programming for each of 8 different program categories...."

RESPONSE: We will provide underlying data in electronic form.

57. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at Appendix B1, paragraph 1: "Most stations appear in the BIA dataset 4 times, providing programming information for each of the accounting periods."

RESPONSE: We will provide underlying data in electronic form.

58. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at Appendix B1, paragraph 2: "The next step is to create one observation for each unique Form 3 system for each accounting period."

RESPONSE: We will provide underlying data in electronic form.

59. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at Appendix B3, carryover

paragraph: "In those 'partially distant' cases, CDC multiplies the DSE times the fraction of the revenues from the cable system subscribers for which the distant signal is a distant signal."

RESPONSE: No documents underlie the specified statement.

60. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at Appendix B3, carryover paragraph: "Of those call sign-system observations with positive constructed DSE's (i.e., instances of distant carriage), 56.3 percent have a distant signal equivalent of 1, and 43.7 percent have a distant signal equivalent of 0.25."

RESPONSE: We will provide underlying data in electronic form.

61. Please provide all documents that underlie, and the documents to which you referred to form the basis of, Appendix B3, footnote 4. Include in your response the source of data for footnote 4 and the statistical error estimates associated with that data.

RESPONSE: No documents underlie the specified table. We object to the remaining portions of this request on the ground that they are outside the requirements of CARP Rules and rulings.

62. Please provide all documents that underlie, and the documents to which you referred to form the basis of, Appendix C. Include in your response the source of data for Appendix C and the statistical error estimates associated with that data.

RESPONSE: We will provide underlying data in electronic form. Please also refer to Dr. Rosston's testimony, at Appendix C.

63. Please provide all documents that underlie, and the documents to which you referred to form the basis of, Appendix D. Include in your response the source of data for Appendix D and the statistical error estimates associated with that data.

RESPONSE: We will provide underlying data in electronic form. We will endeavor to provide statistical error estimates.

64. Please provide all documents that underlie, and the documents to which you referred to form the basis of, Appendix E. Include in your response the

source of data for Appendix E and the statistical error estimates associated with that data.

RESPONSE: We will provide underlying data in electronic form. Please also refer to Dr. Rosston's testimony, at Appendix E.

TESTIMONY OF LAURENCE J. DEFranco

- A. Please provide all documents and source material that underlie, support, or form the basis of, any and all facts, conclusions, and/or opinions contained in Laurence J. DeFranco's testimony.

RESPONSE: We object to these broad, nonspecific discovery requests, on the ground that the requesting party must identify the factual assertions for which underlying documents are sought.

- B. Please provide all material identified in 37 C.F.R. §§ 251.48(e) and (f) relating to any studies, analyses, and statistical studies contained in Mr. DeFranco's testimony, including sample surveys, econometric investigations, experimental analyses, and studies involving statistical methodology.

RESPONSE: We object to these broad, nonspecific discovery requests, on the ground that the requesting party must identify the factual assertions for which underlying documents are sought.

- C. Please provide responses to the following specific discovery requests:

1. Page 1, paragraph 1: Please provide all documents that show the type of "entity" that iMapData, Inc. is, and that identify the interest holders in iMapData, Inc.

RESPONSE: We object on the grounds that the CARP's Rules do not require production of such documents, that the information relates to the witness's background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony.

2. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 2, paragraph 2: "I determined the mileage distance between the principal community of each

Form 3 cable system and the community of license of each station the system carried as a distant signal."

RESPONSE: We will provide data underlying the specified statement in electronic form, we will provide documents underlying the specified statement, and we will provide access to certain databases and documents as more fully set out below in response to the more detailed Requests.

3. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 2, paragraph 2: "To identify the location of the cable system, I again used the first community designated by the system in its Statement of Account, as reported by Cable Data Corporation."

RESPONSE: We will provide data underlying the specified statement in electronic form.

4. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statements at page 3, paragraph 2: "I used 1998-2 and 1999-2 data provided to me by Cable Data Corporation to identify Form 3 cable systems that carried television stations as distant signals in 1998-2 and 1999-2."

RESPONSE: We will provide data underlying the specified statement in electronic form.

5. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 3, paragraph 3: "I used the list of geographic reference points found in Section 76.53 of the FCC rules to identify a location for each U.S. commercial television station found in the database provided by Cable Data Corporation."

RESPONSE: We will provide documents underlying the specified statement.

6. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 3, paragraph 3: "I used the geographic coordinates of the main post office in the community, which I identified from the National Five-Digit Zip Code and Post Office Directory, 1990 and various geographic coordinate databases." Please include in your response the identity of the "various geographic coordinate databases"

referred to, and the identity of the stations for which you used the National Five-Digit Zip Code and Post Office Directory, 1990.

RESPONSE: We will make the *National Five-Digit Zip Code and Post Office Directory, 1990* available for your inspection and use at our offices at a mutually agreeable time. The "geographic coordinates databases" are not physically in our possession; however, we will provide instructions on how you can access those databases. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

7. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the following statements at page 3, paragraph 4: "I used four sources to identify the location of each cable system community listed in the Cable Data Corporation databases...." In your response, please include the documents that underlie the following specific references or phrases:

- a. "geographic coordinates found in the United States Department of the Interior;"
- b. "United States Geological Survey Geographic Names Information System, Populated Places;"
- c. "the Bureau of the Census, United States Department of Commerce;" and
- e. "iMapData databases."

RESPONSE: We will make the databases requested available for your review and provide instructions on how you can access those databases. The iMapData, Inc. database is proprietary to iMapData, Inc.; however, we will work with you to make appropriate arrangements for you to have limited rights access to the relevant portions of the database, sufficient to permit you to replicate and verify Mr. DeFranco's analysis.

8. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statements at page 4, carryover paragraph: "I used more specific information found in the Television and Cable Factbook to help identify the correct location."

RESPONSE: We will make the underlying documents referred to in the specified statement available for your inspection and use at our offices at a mutually agreeable time.

9. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statements at page 4, paragraph 1: "I used 1993 ADI boundaries to identify the 1998-99 media boundaries and ranks."

RESPONSE: We will provide documents underlying the specified statement.

10. Please provide all documents that underlie, and the documents to which you referred to form the basis of, the statements at page 4, paragraph 1: "This database was then combined with the information from Cable Data Corporation identifying the locations of the television stations and Form 3 cable systems." In your response, please provide an explanation of the combination process."

RESPONSE: There are no additional documents underlying the specified statement other than those being produced or made available for inspection and use as noted in response to other Requests. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

11. Please provide all documents that underlie and to which you referred to form the basis of Exhibit 11. Include in your response the source of data for Exhibit 11 and the standard deviation of error associated with that data.

RESPONSE: We will provide data underlying the specified Exhibit in electronic form.

12. Please provide all documents that underlie or to which you referred to form the basis of Exhibit 12. Include in your response the source of data for Exhibit 12 and the statistical error estimates associated with that data.

RESPONSE: We will provide documents underlying the specified Exhibit. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.


13. Please provide all documents that underlie and to which you referred to form the basis of Exhibit 13. Include in your response the source of data for Exhibit 13 and the statistical error estimates associated with that data.

RESPONSE: We will provide documents underlying the specified Exhibit. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

14. Please provide all documents that underlie and to which you referred to form the basis of Exhibit 14. Include in your response the source of data for Exhibit 14 and the statistical error estimates associated with that data.

RESPONSE: We will provide documents underlying the specified Exhibit. We object to the remaining portions of the request as beyond the scope of CARP Rules and rulings.

Very truly yours,



John I. Stewart, Jr.

cc: All Parties (by email)

1964862

Exhibit "B"



December 23, 2002

John I. Stewart, Jr.
202 624-2685
jstewart@crowell.com

VIA EMAIL AND FIRST-CLASS MAIL

Gregory O. Olaniran, Esq.
Stinson, Morrison, & Hecker, LLP
1150 18th Street, N.W.
Suite 800
Washington, DC 20036-3816

Re: 1998-1999 Cable Royalty Distribution Proceeding
Docket No. 2001-8 CARP CD 98-99

Dear Greg:

This letter constitutes the responses of the National Association of Broadcasters ("NAB") to the follow-up discovery requests submitted by the Program Suppliers on December 19, 2002, in connection with the above-referenced matter.

We repeat each of your written follow-up requests below, followed by our Response. To the extent we agree to provide underlying documents or data, we will produce non-privileged documents and data only, and will make such documents and data available for your inspection and copying, at your expense, at our offices on January 3, 2003.

* * * * *

Please find below Program Suppliers' follow-up discovery requests ("Follow-up Request(s)"). These requests should be answered in accordance with the instructions and definitions that accompanied Program Suppliers' Initial Discovery Requests dated December 6, 2002 ("Initial Requests") which are hereby incorporated by reference. The Follow-up Requests are numbered sequentially - continuing from the Initial Requests made of each NAB witness. Note that the materials sought in this letter may be supplemented. Pursuant to the procedural schedule for this proceeding, your responses to the Follow-up Requests are due on December 23, 2002.

Also, please note the following: (1) "PS Request No(s)." as used herein refers to the Initial Request number(s) and (2) "NAB Document No(s)." as used herein refers to the document referred to in the Responses of the National Association of Broadcasters to the Initial Document Requests of Program Suppliers ("Initial Responses").

RESPONSE: We respectfully decline to accommodate your detailed special "Instructions" and definitions. We further object generally to your requests that purport to require the provision of information rather than the production of documents or data underlying specific testimony. We will respond in accordance with CARP Rules and rulings.

Testimony of Richard V. Ducey

86. In PS Request No. C1, we requested "all documents that show the type of 'entity' SpectraRep is and that identify the interest holders in SpectraRep." You failed to provide any documents in response to PS Request No. C1 stating that "CARP rules do not require production of such documents, that the information relates to the witness's background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony." We disagree with your objections. Among other things, the documents we request are essential to establishing the nature of SpectraRep's business as such business is briefly referenced in the opening paragraph of Dr. Ducey's testimony. In addition, such documents are relevant to ascertaining whatever qualifications Dr. Ducey, as a representative of SpectraRep, possesses to make the assertions in his testimony. Examples of documents that, at a minimum, should be provided include a prospectus or a brochure describing SpectraRep's business. This is entirely permissible discovery. If Dr. Ducey claims not to have any responsive documents, your response must state so clearly.

RESPONSE: We object on the grounds that CARP rules do not require production of such documents, that the information does not relate to the witness's background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony. We have not determined whether any documents are responsive to this request.

87. In PS Request No. C2, we requested "all documents that show the type of 'entity' the BIA Financial Network is and that identify the interest holders in the BIA Financial Network." You failed to provide any documents in response to PS Request No. C2 stating that "CARP rules do not require production of such documents, that the information relates to the witness's

background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony.." We disagree with your objections. Among other things, the underlying documents we request are essential to establishing the nature of the BIA Financial Network's business as such business is described in the opening paragraph of Dr. Ducey's testimony. In addition, such documents are relevant to ascertaining whatever qualifications Dr. Ducey, as a representative of the BIA Financial Network, possesses to make the assertions in his testimony. Examples of documents that, at a minimum, should be provided include a prospectus or a brochure describing the BIA Financial Network's business. This is entirely permissible discovery. If Dr. Ducey claims not to have any responsive documents, your response must state so clearly.

RESPONSE: We object on the grounds that CARP rules do not require production of such documents, that the information does not relate to the witness's background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony. We have not determined whether any documents are responsive to this request.

88. In PS Request No. C5, we requested that you identify and list the "industry panels, seminars and speeches on research methodology, statistical analysis, telecommunication technology and strategic marketing[.]" which Dr. Ducey has conducted. You failed to provide any documents, citing the attachment to Dr. Ducey's testimony, and stating that "CARP rules require only the production of underlying documents, that the requested information relates to the witness's background and credentials, and that such information does not constitute documents underlying specific factual assertions made in the witness's testimony." We disagree with your objections with respect to Dr. Ducey's background and credentials, the attachment to Dr. Ducey's testimony does not list the industry panels, seminars and speeches he has conducted. Moreover, PS Request No. C5 targets the specific factual assertion that Dr. Ducey conducted "industry panels, seminars and speeches on research methodology, statistical analysis, telecommunication technology and strategic marketing." We are entitled to examine responsive underlying documents, to the extent they exist, to test such an assertion. This is entirely permissible discovery and requires a response. If Dr. Ducey claims not to have any responsive documents, your response must state so clearly.

RESPONSE: We object on the grounds that CARP rules do not require production of such documents, that the information relates to the witness's background and credentials, and that such documents do not

underlie factual assertions made in the witness's testimony. We have not determined whether any documents are responsive to this request.

89. In PS Request No. C6, we requested that you identify and list the "subscriber surveys with various cable operators" which Dr. Ducey has reviewed. You failed to provide any documents, citing the attachment to Dr. Ducey's testimony, and stating that "CARP rules require only the production of underlying documents, that the requested information relates to the witness's background and credentials, and that such information does not constitute documents underlying specific factual assertions made in the witness's testimony." We disagree with your objections. First, the attachment to Dr. Ducey's testimony containing his background and credentials does not identify the subscriber surveys with various cable operators which Dr. Ducey asserts he has reviewed. Moreover, PS Request No. C6 targets a specific factual assertion — Dr. Ducey's claim that he has reviewed "subscriber surveys with various cable operators." We are entitled to these subscriber surveys, and all related documents prepared by Dr. Ducey or in his possession, to fully test Dr. Ducey's claim. This is entirely permissible discovery. If Dr. Ducey claims not to have any responsive documents, your response must state so clearly.

RESPONSE: We object on the grounds that CARP rules do not require production of such documents, that the information relates to the witness's background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony. We have not determined whether any documents are responsive to this request.

90. In PS Request No. C7, we requested that you identify, list, and provide the "subscriber surveys" which Dr. Ducey "had access to" as part of his "academic research and industry consulting." You failed to provide any documents, citing the attachment to Dr. Ducey's testimony, and stating that "CARP rules require only the production of underlying documents, that the requested information relates to the witness's background and credentials, and that such information does not constitute documents underlying specific factual assertions made in the witness's testimony." We disagree with your objections. The attachment to Dr. Ducey's testimony containing his background and credentials does not identify the subscriber surveys to which Dr. Ducey had access as part of his academic research and consulting. Moreover, PS Request No. C7 targets a specific factual assertion — Dr. Ducey's claim that he had access to "subscriber surveys" as part of his "academic research and industry consulting." We are entitled to all underlying documents prepared by Dr. Ducey or in his possession with

respect to the subscriber surveys. This is entirely permissible discovery and requires a response. If Dr. Ducey claims not to have any responsive documents, your response must state so clearly.

RESPONSE: We object on the grounds that CARP rules do not require production of such documents, that the information relates to the witness's background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony. We have not determined whether any documents are responsive to this request.

91. In PS Request No. C8, we requested that you identify, list, and provide the following items with which Dr. Ducey "continued to monitor and study the cable industry:"

- a. Industry trade press;
- b. Academic research.

You failed to provide any documents citing the attachment to Dr. Ducey's testimony, and stating that "CARP rules require only the production of underlying documents, that the requested information relates to the witness's background and credentials, and that such information does not constitute documents underlying specific factual assertions made in the witness's testimony." With respect to the former, the attachment to Dr. Ducey's testimony does not list, with specificity, the industry trade press and academic research with which Dr. Ducey continued to monitor the cable industry. With respect to the latter, we disagree with your objections. Dr. Ducey asserts that he continued to monitor the cable industry with industry trade press and academic research in order to boost his credibility for the testimony produced. We are entitled to know the identity of the industry trade press and academic research to which Dr. Ducey is referring. This is entirely permissible discovery. If Dr. Ducey claims not to have any responsive documents, your response must state so clearly.

RESPONSE: We object on the grounds that CARP rules do not require production of such documents, that the information relates to the witness's background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony. We have not determined whether any documents are responsive to this request.

92. In PS Request No. C31, we requested "all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 9, paragraph 1: 'WTBS's programming was more heavily weighted towards syndicated series, movies, and sports programs and had less station-produced and devotional programming than the rest of the distant signal

universe.” You provided two CD-ROM disks filled with data underlying the testimony of Dr. Mark Fratrick. Under CARP rules, underlying data must be furnished in as organized and usable a form as possible. The data provided on the two CD-ROM disks, however, is disorganized and unusable in its present format because: (a) no index or key to interpret the data has been provided along with the disks; and (b) the text contained in the CD-ROM files, in many instances, fail to show delineated fields which would allow one to differentiate one type of data from another (for example, mere column headings are not distinguishable from the actual information). Indeed, while the CD-ROM associated with Dr. Rosston’s testimony includes an index and fields to differentiate one type of data from another, the CD-ROM disks presently at issue fail to do so. Accordingly, please provide us with an organized and usable set of CD-ROM disks underlying the testimony of Dr. Fratrick, including an index or key to interpret the data, and fields to differentiate one type of data from another.

RESPONSE: We will provide an index or key to the data on the specified discs. We will provide an explanation of the fields contained within the files. We object to your characterization of the form in which we provided the data as unusable and disorganized. We provided the data necessary to replicate and verify the bottom line numbers presented in the testimony, and the data are generally susceptible to analysis using conventional data analysis techniques.

93. Please refer to Follow-Up Request No. 92 regarding your response to PS Request No. C33.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

94. Please refer to Follow-Up Request No. 92 regarding your response to PS Request No. C44.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

95. Please refer to Follow-Up Request No. 92 regarding your response to PS Request No. C46.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

96. Please refer to Follow-Up Request No. 92 regarding your response to PS Request No. C47.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

97. Please refer to Follow-Up Request No. 92 regarding your response to PS Request No. C48.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

98. Please refer to Follow-Up Request No. 92 regarding your response to PS Request No. C49.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

99. In PS Request No. C50, we requested "all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 12, paragraph 1: 'PBS and Canadian programming, which stayed at a relatively constant level of carriage between 1992 and 1998-1999, now represents a larger relative percentage of the programming universe.'" You provided 31 spreadsheets which are only partially responsive to our request. While "Canadian programming" is specifically mentioned on each spreadsheet, there is no mention of PBS programming. Please provide the documents responsive to this request with respect to PBS programming. If no responsive documents exist, please state so clearly in your response.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe the requested documents have already been provided.

100. Please refer to Follow-Up Request No. 92 regarding your response to PS Request No. C52.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

101. Please refer to Follow-Up Request No. 92 regarding your response to PS Request No. C53.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

102. Please refer to Follow-Up Request No. 92 regarding your response to PS Request No. C57.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

103. Please refer to Follow-Up Request Nos. 92 regarding your response to PS Request No. C85.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe the specified data have already been provided.

Testimony of Marcellus Alexander, Jr.

20. In PS Request No. C4, we requested "all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 2, paragraph 3: 'I am aware that the station was carried as a distant signal in 1999 by a number of cable systems in smaller television markets in upstate Pennsylvania, as well as in New Jersey and Delaware.' In your response, please identify and list the cable systems in smaller television markets to which you refer." In your response, you stated "Data identifying the systems that carried the station will be provided in electronic format in response to requests directed to Dr. Fratrik." Please specify the response provided by Dr. Fratrik, and the request directed to him by Program Suppliers.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided. Notwithstanding and without waiving our objection, we will provide references to previous responses in response to this follow-up request.

21. In PS Request No. C12, we requested "all documents that underlie, and the documents to which you referred to form the basis of, your statement at Page 4, paragraph 1: 'I am aware that WJZ was carried by cable systems from one end of the state of Maryland to the other, in addition to systems in

DC, Delaware, Pennsylvania, and even West Virginia.' In your response, please identify and list each cable system referred to, and the dates of carriage." In your response, you stated "Data identifying the systems that carried the station will be provided in electronic format in response to requests directed to Dr. Fratrik." Please specify the response provided by Dr. Fratrik, and the request directed to him by Program Suppliers.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided. Notwithstanding and without waiving our objection, we will provide references to previous responses in response to this follow-up request.

22. In PS Request No. C19, we requested all documents that underlie the data reported in Exhibit 9, including the source of data for the Exhibit. In your response, you stated "Data identifying the programs will be provided in electronic format in response to requests directed to Dr. Fratrik." Please specify the response provided by Dr. Fratrik, and the request directed to him by Program Suppliers.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided. Notwithstanding and without waiving our objection, we will provide references to previous responses in response to this follow-up request.

Testimony of Mark R. Fratrik

43. In PS Request No. C1, we requested "all documents that show the type of 'entity' the BIA Financial Network is and that identify the interest holders in the BIA Financial Network." You failed to provide any documents in response to PS Request No. C1 stating that "CARP rules do not require production of such documents, that the information relates to the witness's background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony." We disagree with your objections. Among other things, the underlying documents we request are essential to establishing the nature of the BIA Financial Network's business as such business is described in the opening paragraph of Dr. Fratrik's testimony. In addition, such documents are relevant to ascertaining whatever qualifications Dr. Fratrik, as a representative of the BIA Financial Network, possesses to make the assertions in his testimony. Examples of documents that, at a minimum, should be provided include a prospectus or a

brochure describing the BIA Financial Network's business. This is entirely permissible discovery. If Dr. Fratrack claims not to have any responsive documents, your response must state so clearly.

RESPONSE: We object on the grounds that CARP rules do not require production of such documents, that the information does not relate to the witness's background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony. We have not determined whether any documents are responsive to this request.

44. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C3.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

45. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C8.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

46. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C9.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

47. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C10.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive documents and data have already been provided

48. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C11.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

49. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C12.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

50. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C13.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

51. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C14

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

52. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C16.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

53. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C17.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

54. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C18.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

55. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C21.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

56. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C22.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

57. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C23.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

58. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C24.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

59. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C25.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

60. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C26.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

61. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C27.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

62. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C28.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

63. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C29.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

64. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C30.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

65. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C31.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

66. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C32.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

67. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C33.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

68. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C34.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

69. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C35.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

70. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C36.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

71. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C37.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

72. In PS Request No. C38, we requested all documents that underlie, and the documents to which you referred to form the basis of, the data reported at NAB Exhibit 10, Appendix 1, including the source of data for the appendix, and the methodology utilized in compiling that data. You responded that you would provide data underlying the Appendix in electronic form. However, the only document which has been provided is a copy of Exhibit 10, Appendix 1 itself. This production is not responsive to the request. Accordingly, please provide the documents responsive to this request. If no responsive documents exist, please state so clearly in your response.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe the responsive materials have already been provided.

73. In PS Request No. C40, we requested all documents that underlie, and the documents to which you referred to form the basis of, the data reported at NAB Exhibit 10, Appendix 3, including the source of data for the appendix, and the methodology utilized in compiling that data. You responded that you would provide data underlying the Appendix in electronic form. However, the only document which has been provided is a copy of Exhibit 10, Appendix 3 itself. This production is not responsive to the request. Accordingly, please provide the documents responsive to this request. If no responsive documents exist, please state so clearly in your response.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe the responsive materials have already been provided.

74. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C41.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

75. Please refer to Ducey Follow-Up Request No. 92 regarding your response to PS Request No. C42.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 92.

Testimony of Gregory L. Rosston

65. In PS Request No. C2, we requested that the "aspects of the cable television industry" Dr. Rosston studied while at the FCC and since that time be identified. You failed to provide any documents, citing Appendix A to Dr. Rosston's testimony, and stating that "CARP rules require only the production of underlying documents, that the requested information relates to the witness's background and credentials, and that such information does not constitute documents underlying specific factual assertions made in the witness's testimony." We disagree with your objections. With respect to Appendix A, it fails to state which aspects of the cable industry Dr. Rosston studied while at the FCC and since that time. Moreover, our request targets a specific factual assertion — Dr. Rosston's assertion that he studied "aspects of the cable television industry" while at the FCC. It is entirely permissible to seek documents underlying this assertion. If Dr. Rosston claims not to have any responsive documents, your response must state so clearly.

RESPONSE: We object on the grounds that CARP rules do not require production of such documents, that the information relates to the witness's background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony. We have not determined whether any documents are responsive to this request.

66. In PS Request No. C16, we requested "all documents that underlie and the documents to which you referred to form the basis of, the simple regression model listed at page 7, paragraph 2." You responded that "Dr. Rosston relied upon his general knowledge and expertise. We will provide data underlying the performance of the regression model, as requested in subsequent requests." You provided a CD-ROM disk with respect to the latter portion of the response (i.e., the performance of the regression model). However, we have been unable to access the following portions of the CD-ROM disk: (a) CRD19991.xls and (b) CRD19992.xls. Accordingly, please provide us with the aforementioned portions of Dr. Rosston's CD-ROM disk in an accessible format. In this regard, we reserve the right to ask follow up

questions with respect to your response to PS Request No. C16 when we are able to obtain access to the currently inaccessible portions of the CD-ROM. Additionally, please identify the source(s) of the data for the following portions of the CD-ROM disk: (a) 97_sub_channel_data.xls and (b) master_dataset_for_expert_report.xls.

RESPONSE: We will provide another copy of the specified disc. We will identify the source of data for the specified files, to the extent not already identified in the direct case testimony. We object to your purported reservation of a right to make further document requests regarding the specified files, on the grounds that the data necessary to replicate and verify the bottom line numbers presented in the testimony were provided in accordance with the discovery schedule, and the data are generally susceptible to analysis using conventional data analysis techniques.

67. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C17.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 66.

68. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C18.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided

69. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C19.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 66.

70. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C20.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 66.

71. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C21.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 66.

72. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C26.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided

73. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C27.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided

74. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C32.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided

75. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C33.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided

76. Please refer to Follow-Up Request No. 67 regarding your response to PS Request No. C34.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided

77. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C35.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided

78. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C38.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided

79. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C39.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided

80. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C40.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided

81. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C45.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided

82. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C46.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 66.

83. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C47.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 66.

84. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C49.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 66.

85. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C50.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided

86. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C52.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided

87. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C54.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 66.

88. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C55.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 66.

89. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C56.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 66.

90. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C57.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided

91. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C58.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 66.

92. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C60.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 66.

93. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C62.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 66.

94. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C63. In addition, please distinguish between BIA Financial Network and Cable Data Corporation documents. Finally, you failed to provide the requested statistical error estimates for the data presented in the Exhibit. Accordingly, please provide the statistical error estimates for the data presented in the Exhibit. If none is available, please state so clearly in your response.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided. We will, however, endeavor to provide statistical error estimates.

95. Please refer to Follow-Up Request No. 66 regarding your response to PS Request No. C64.

RESPONSE: We object to the use of repeated and non-specific follow-up requests. See Response to follow-up request No. 66.

Testimony of Laurence J. DeFranco

15. In PS Request No. C1, we requested "all documents that show the type of 'entity' iMapData, Inc. is and that identify the interest holders in iMapData, Inc." You failed to provide any documents stating that "CARP's Rules do not require production of such documents, that the information relates to the witness's background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony." We disagree with your objections. Among other things, the underlying documents we request are essential to establishing the nature of iMapData's business as described in the opening paragraph of Mr. DeFranco's testimony. In addition, such documents are critical to ascertaining whatever qualifications Mr. DeFranco, as a representative of iMapData, possesses to make the assertions in his testimony. Examples of documents that, at a minimum, should be provided include a prospectus for iMapData. This is entirely permissible discovery. If Mr. DeFranco claims not to have any documents that demonstrate iMapData's identity and interest holders, your response must state so clearly.

RESPONSE: We object on the grounds that CARP rules do not require production of such documents, that the information does not relate to the witness's background and credentials, and that such documents do not underlie factual assertions made in the witness's testimony. We have not determined whether any documents are responsive to this request.

16. In PS Request No. C3, we requested "all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 2, paragraph 2: 'To identify the location of the cable system, I again used the first community designated by the system in its Statement of Account, as reported by Cable Data Corporation.'" It is unclear who authored the CD-ROM spreadsheet you provided in response to our request. Assuming the CD-ROM spreadsheet was created by Mr. DeFranco based on underlying data provided to him by Cable Data Corporation, you failed to provide us with the underlying data provided to him by Cable Data Corporation. Assuming the CD-ROM spreadsheet was created by Cable Data Corporation, you failed to provide us with a copy of the request from Mr. DeFranco to Cable Data Corporation for the creation of such data. Accordingly, please provide the documents responsive to this request. If no responsive documents exist, please state so clearly in your response.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided. Notwithstanding and without waiving our objection, we will provide references to further data in response to this follow-up request.

17. In PS Request No. C4, we requested "all documents that underlie, and the documents to which you referred to form the basis of, the statements at page 3, paragraph 2: 'I used 1998-2 and 1999-2 data provided to me by Cable Data Corporation to identify Form 3 cable systems that carried television stations as distant signals in 1998-2 and 1999-2.'" It is unclear who authored the CD-ROM spreadsheet you provided in response to our request. Assuming the CD-ROM spreadsheet was created by Mr. DeFranco based on underlying data provided to him by Cable Data Corporation, you failed to provide us with the underlying data provided to him by Cable Data Corporation. Assuming the CD-ROM spreadsheet was created by Cable Data Corporation, you failed to provide us with a copy of the request from Mr. DeFranco to Cable Data Corporation for the creation of such data. Accordingly, please provide the documents responsive to this request. If no responsive documents exist, please state so clearly in your response.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided. Notwithstanding and without waiving our objection, we will provide references to further data in response to this follow-up request.

18. In PS Request No. C5, we requested "all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 3, paragraph 3: 'I used the list of geographic reference points found in Section 76.53 of the FCC rules to identify a location for each U.S. commercial television station found in the database provided by Cable Data Corporation.'" It is unclear who authored the CD-ROM spreadsheet you provided in response to our request. Assuming the CD-ROM spreadsheet was created by Mr. DeFranco based on underlying data provided to him by Cable Data Corporation, you failed to provide us with the underlying data provided to him by Cable Data Corporation. Assuming the CD-ROM spreadsheet was created by Cable Data Corporation, you failed to provide us with a copy of the request from Mr. DeFranco to Cable Data Corporation for the creation of such data. Accordingly, please provide the documents responsive to this request. If no responsive documents exist, please state so clearly in your response.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided. Notwithstanding and without waiving our objection, we will provide references to further data in response to this follow-up request.

19. In PS Request No. C6, we requested "all documents that underlie, and the documents to which you referred to form the basis of, the statement at page 3, paragraph 3: 'I used the geographic coordinates of the main post office in the community, which I identified from the National Five-Digit Zip Code and Post Office Directory, 1990 and various geographic coordinate databases.' Please include in your response the identity of the 'various geographic coordinate databases' referred to, and the identity of the stations for which you used the National Five-Digit Zip Code and Post Office Directory, 1990." In your response, you stated that the "geographic coordinates databases" are not physically in our possession; however, we will provide instructions on how you can access those databases." You failed to provide us with instructions on how to access the geographic coordinate databases. Accordingly, please provide us with instructions on how to access the geographic coordinate databases referred to in Mr. DeFranco's testimony.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive materials have already been provided. Notwithstanding and without waiving our objection, we will provide further instructions in response to this follow-up request.

20. In PS Request No. C7, we requested "all documents that underlie, and the documents to which you referred to form the basis of, the following statements at page 3, paragraph 4: 'I used four sources to identify the location of each cable system community listed in the Cable Data Corporation databases....' In your response, please include the documents that underlie the following specific references or phrases:

- a. 'geographic coordinates found in the United States Department of the Interior;'
- b. 'United States Geological Survey Geographic Names Information System, Populated Places;'
- c. 'the Bureau of the Census, United States Department of Commerce;' and
- d. 'iMapData databases.'"

In your response, you stated that the "The iMapData, Inc. database is proprietary to iMapData, Inc.; however, we will work with you to make appropriate arrangements for you to have limited rights access to the

relevant portions of the database, sufficient to permit you to replicate and verify Mr. DeFranco's analysis." Please clarify the term "limited rights access," and please provide us with the requested access to the relevant portions of the database immediately. Additionally, if the so-called "limited rights access" is insufficient under the CARP regulations, we reserve the right to ask follow up questions with respect to PS Request No. C7.

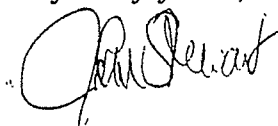
RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided. Notwithstanding and without waiving our objection, we will provide further explanations in response to this follow-up request.

21. In PS Request No. C9, we requested "all documents that underlie, and the documents to which you referred to form the basis of, the statements at page 4, paragraph 1: 'I used 1993 ADI boundaries to identify the 1998-99 media boundaries and ranks.'" You responded that you would "provide documents underlying the specified statement." However, no documents have been provided. Accordingly, please provide the documents responsive to this request. If no responsive documents exist, please state so clearly in your response.

RESPONSE: We object to this follow-up request as ambiguous and incomprehensible. We believe that responsive data have already been provided.

Please let me know if you have any questions about these responses.

Very truly yours,



John I. Stewart, Jr.

cc: All Parties (by email)

Exhibit "C"

Exhibit "C"

Please note that the portions of NAB's direct case testimony set forth below is designated to correspond to Program Suppliers' discovery requests and in the following manner for ease of reference: Program Suppliers' Initial Discovery Request Number followed by Program Suppliers Follow-Up Discovery Request Number (e.g., Ducey (C)31/Ducey 92).

Ducey (C)31/Ducey 92

At page 9, paragraph 1 of Dr. Ducey's testimony, Dr. Ducey states that "WTBS's programming was more heavily weighted towards syndicated series, movies, and sports programs and had less station-produced and devotional programming than the rest of the distant signal universe."

Ducey (C)44/Ducey 94

At page 11, paragraph 4 of Dr. Ducey's testimony, Dr. Ducey states that "In 1992, WTBS carried a range of types of programming."

Ducey (C)46/Ducey 95

At page 11, paragraph 4 of Dr. Ducey's testimony, Dr. Ducey states that "its particular mix of programming heavily weighted the overall distribution of program percentages across claimant categories."

Ducey (C)47/Ducey 96

At page 11, paragraph 4 of Dr. Ducey's testimony, Dr. Ducey states that "to the extent WTBS differed from the programming mix of the average station carried as a distant signal, it *heavily influenced the overall program category results*."

Ducey (C)48/Ducey 97

At page 11, paragraph 5 of Dr. Ducey's testimony, Dr. Ducey states that "The difference in the mix of the programming in the distant signal marketplace with and without the presence of WTBS is a major explanation for the changing configuration of the distant signal program category data in table 2."

Ducey (C)49/Ducey 98

At page 12, paragraph 1 of Dr. Ducey's testimony, Dr. Ducey states that "Because the total size of the distant signal programming universe decreased when WTBS made its conversion, PBS and Canadian programming, which stayed at a relatively constant level of carriage between 1992 and 1998-1999, now represents a larger relative percentage of the programming universe."

Ducey (C)52/Ducey 100)

At page 12, paragraph 2 of Dr. Ducey's testimony, Dr. Ducey states that "This is again heavily affected by WTBS's being taken out of the programming mix, since, as you can see from Exhibit 6, 86.6% of WTBS's programming in 1992 consisted of syndicated programs for movies, compared with 74.3% of the non-network programming time across all the other stations carried as distant signals."

Ducey (C)53/Ducey 101)

At page 12, paragraph 2 of Dr. Ducey's testimony, Dr. Ducey states that "86.6% of WTBS's programming in 1992 consisted of syndicated programs and movies, compared with 74.3% of the non-network programming time across all the other stations carried as distant signals."

Ducey (C)84

Exhibit 6 of its NAB's Phase I direct case.

Ducey (C)85/Ducey 103

Exhibit 7 of its NAB's Phase I direct case.

Alexander (C)4/Alexander 20

At page 2, paragraph 3 of Mr. Alexander's testimony, Mr. Alexander states that "I am aware that the station was carried as a distant signal in 1999 by a number of cable systems in smaller television markets in upstate Pennsylvania, as well as in New Jersey and Delaware."

Alexander (C)12/Alexander 21

At page 4, paragraph 1 of Mr. Alexander's testimony, Mr. Alexander states that "I am aware that WJZ was carried by cable systems from one end of the state of Maryland to the other, in addition to systems in DC, Delaware, Pennsylvania, and even West Virginia."

Alexander (C)19/Alexander 22

Exhibit 9 of NAB's Phase I direct case

Fratrik (C)3/Fratrik 44

At Exhibit 10, page 2, paragraph 1 of Dr. Fratrik's testimony, Dr. Fratrik states that "we reviewed the carriage data provided by Cable Data Corporation, the standard source for such information in these proceedings."

Fratrik (C)3/Fratrik 44

At Exhibit 10, page 2, paragraph 1 of Dr. Fratrik's testimony, Dr. Fratrik states that "We also obtained distant subscriber numbers for each of those stations from Cable Data Corporation for use in our analysis."

Fratrik (C)9/Fratrik 46

At Exhibit 10, page 2, paragraph 1 of Dr. Fratrik's testimony, Dr. Fratrik states that "We also obtained distant subscriber numbers for each of those stations from Cable Data Corporation for use in our analysis."

Fratrik (C)11/Fratrik 48

At Exhibit 10, page 3, paragraph 1 of Dr. Fratrik's testimony, Dr. Fratrik states that "Of all the television stations that were carried as distant signals on Form 3 cable systems at any time during 1992, 612 were U.S. commercial, full-power television stations."

Fratrik (C)12/Fratrik 49

At Exhibit 10, page 3, paragraph 1 of Dr. Fratrik's testimony, Dr. Fratrik states that "Correspondingly, in 1998 and 1999, 683 U.S. commercial full-power television stations were carried as distant signals by Form 3 cable systems for at least one half-year period during those years."

Fratrik (C)14/Fratrik 51

At Exhibit 10, page 4, paragraph 2 of Dr. Fratrik's testimony, Dr. Fratrik states that "Finally, TVData was able to supply us with an additional field that indicated whether the program was syndicated."

Fratrik (C)16/Fratrik 52

At Exhibit 10, page 5, carryover paragraph of Dr. Fratrik's testimony, Dr. Fratrik states that "and excluded from our analysis all of the substituted programs on the national feed."

Fratrik (C)17/Fratrik 53

Exhibit 10, page 5, Table 1 of NAB's Phase I direct case.

Fratrik (C)18/Fratrik 54

At Exhibit 10, page 6, paragraph 1 of Dr. Fratrik's testimony, Dr. Fratrik states that "For Educational, Mexican, and Low-Power television stations the total hours of programming aired on the distant signals for these stations are assigned to their respective program categories."

Fratrik (C)21/Fratrik 55

At Exhibit 10, page 6, paragraph 2 of Dr. Fratrik's testimony, Dr. Fratrik states that "For all of these four groups of television stations (Canadian, Educational, Mexican, and Low-Power), we obtained from TVData the start and end times for each of the randomly selected days."

Fratrik (C)22/Fratrik 56

At Exhibit 10, page 6, paragraph 2 of Dr. Fratrik's testimony, Dr. Fratrik states that "We then calculated the total number of minutes each of these stations was on air for each of these days."

Fratrik (C)23/Fratrik 57

At Exhibit 10, page 6, paragraph 2 of Dr. Fratrik's testimony, Dr. Fratrik states that "For each of the Canadian stations, we allocated these minutes across the three categories of programming and assigned those values to the respective claimant categories."

Fratrik (C)24/Fratrik 58

At Exhibit 10, page 9, paragraph 1 of Dr. Fratrik's testimony, Dr. Fratrik states that "All programs that were delivered by any of the three traditional networks (ABC, CBS, and NBC) were taken out of the analysis."

Fratrik (C)25/Fratrik 59

At Exhibit 10, page 9, paragraph 1 of Dr. Fratrik's testimony, Dr. Fratrik states that "All programs that were delivered by any of the non-traditional networks (Fox, Paxson, Telemundo, UPN, WB, and Univision) were initially placed in the Program Suppliers claimant category."

Fratrik (C)26/Fratrik 60

At Exhibit 10, page 9, paragraph 1 of Dr. Fratrik's testimony, Dr. Fratrik states that "All programs that were listed by TVData as being the following types were placed into the Program Suppliers category."

Fratrik (C)27/Fratrik 61

At Exhibit 10, page 10, carryover paragraph of Dr. Fratrik's testimony, Dr. Fratrik states that "All programs involving games of any of the major sports leagues (NBA, NFL, Major League Baseball, NHL, and College Baseball, Basketball, and Football games), including those previously placed in the Program Suppliers category, were placed in the Sports category."

Fratrik (C)28/Fratrik 62

At Exhibit 10, page 10, carryover paragraph of Dr. Fratrik's testimony, Dr. Fratrik states that "All programs that were listed by TVData as being infomercial or animated were placed into the Program Suppliers category."

Fratrik (C)29/Fratrik 63

At Exhibit 10, page 10, carryover paragraph of Dr. Fratrik's testimony, Dr. Fratrik states that "All programs that were listed as being aired on two or more different stations were placed into the Program Suppliers category."

Fratrik (C)30/Fratrik 64

At Exhibit 10, page 10, carryover paragraph of Dr. Fratrik's testimony, Dr. Fratrik states that "All programs that had not already been assigned to any claimant category and that TVData indicated were syndicated were placed into the Program Suppliers category."

Fratrik (C)31/Fratrik 65

At Exhibit 10, page 10, carryover paragraph of Dr. Fratrik's testimony, Dr. Fratrik states that "All religious programs with titles that were included in a list of program titles provided by the Devotional Claimants were placed into the Devotional category."

Fratrik (C)32/Fratrik 66

At Exhibit 10, page 10, carryover paragraph of Dr. Fratrik's testimony, Dr. Fratrik states that "Programs that were not otherwise assigned to any other category, and that were broadcast by only a single station during the year in question, were assigned to the Commercial Television category, subject to further review."

Fratrik (C)33/Fratrik 67

At Exhibit 10, page 10, carryover paragraph of Dr. Fratrik's testimony, Dr. Fratrik states that "Programs in the Commercial Television category and programs that had not already been assigned to any claimant category were reviewed, and when there were questions concerning the appropriate category they were placed into the Program Suppliers category."

Fratrik (C)34/Fratrik 68

At Exhibit 10, page 12, paragraph 2 of Dr. Fratrik's testimony, Dr. Fratrik states that "we calculated the percentage of all Form 3 distant signal subscribers that had access to each of the carried distant signals, including all commercial full-power, educational, Canadian, Mexican, and low-power stations."

Fratrik (C)35/Fratrik 69

At Exhibit 10, page 12, paragraph 3 of Dr. Fratrik's testimony, Dr. Fratrik states that "we first multiplied the duration of each U.S. commercial full-power station's program by that station's distant signal subscriber percentage."

Fratrik (C)36/Fratrik 70

At Exhibit 10, page 12, paragraph 3 of Dr. Fratrik's testimony, Dr. Fratrik states that "The subscriber-weighted programming minutes of the different commercial stations were then grouped by programming type and summed."

Fratrik (C)37/Fratrik 71

Exhibit 10, page 13, Table 3 of NAB's Phase I direct case.

Fratrik (C)41/Fratrik 74

Exhibit 10, Appendix 4 of NAB's Phase I direct case.

Fratrik (C)42/Fratrik 75

Exhibit 10, Appendix 5 of NAB's Phase I direct case.

Exhibit "D"

Exhibit "D"

Please note that the portions of NAB's direct case testimony set forth below is designated to correspond to Program Suppliers' discovery requests and in the following manner for ease of reference: Program Suppliers' Initial Discovery Request Number followed by Program Suppliers Follow-Up Discovery Request Number (e.g., Rosston (C)16/Rosston 66).

Rosston (C)16/Rosston 66

The simple regression model listed at page 7, paragraph 2 of Dr. Rosston's testimony.

Rosston (C)17/Rosston 67

Any reference in Dr. Rosston's testimony to the programming minutes carried via distant signals for the following categories of programming which are elements of the simple regression model listed at page 7, paragraph 2 of Dr. Rosston's testimony:

Program Suppliers;
Sports;
Commercial TV;
Public;
Devotional;
Canadian;
Low Power; and
Mexican.

Rosston (C)18/Rosston 68

Any reference in Dr. Rosston's testimony to the "control factor" elements of the simple regression model listed at page 7, paragraph 2 of Dr. Rosston's testimony.

Rosston (C)19/Rosston 69

Any reference in Dr. Rosston's testimony to statistical error estimates of the simple regression model listed at page 7, paragraph 2 of Dr. Rosston's testimony.

Rosston (C)20/Rosston 70

Any reference in Dr. Rosston's testimony to calculations with respect to the simple regression model listed at page 7, paragraph 2 of Dr. Rosston's testimony.

Rosston (C)21/Rosston 71

The statement at page 9, paragraph 1 of Dr. Rosston's testimony that "we have developed a regression model that incorporates other factors that are important determinants of royalties."

Rosston (C)26/Rosston 72

The statement at page 10, paragraph 1 of Dr. Rosston's testimony that "The model accounts for differences in income across areas through inclusion of an income measure."

Rosston (C)27/Rosston 73

Any reference in Dr. Rosston's testimony to the "variables that control for the different time periods from which the observations are taken" as mentioned by Dr. Rosston at page 10, paragraph 1 of his testimony.

Rosston (C)28

The statement at page 10, paragraph 2 of Dr. Rosston's testimony that "The income measure is the average household income in the television market in which the cable system operates."

Rosston (C)32/Rosston 74

The "royalties" model listed at page 11, carryover paragraph of Dr. Rosston's testimony.

Rosston (C)33/Rosston 75

Any reference in Dr. Rosston's testimony to the "panel data" discussed at page 11, paragraph 1 of Dr. Rosston's testimony.

Rosston (C)34/Rosston 76

Any reference in Dr. Rosston's testimony to the "random effects model" discussed at page 11, paragraph 1 of Dr. Rosston's testimony.

Rosston (C)35/Rosston 77

Any reference in Dr. Rosston's testimony to the "fixed effects model" discussed at page 11, paragraph 1 of Dr. Rosston's testimony.

Rosston (C)38/Rosston 78

The statement at page 12, paragraph 2 of Dr. Rosston's testimony that "Of the Form 3 systems, 17.4% had zero DSEs and 8.3% had greater than zero but fewer than or equal to 0.75 DSEs during 1998-1999."

Rosston (C)39/Rosston 79

The statement at page 13, carryover paragraph of Dr. Rosston's testimony that "This translates into estimating the regression for two different samples, one with all systems with $DSE > 0$ and one with $DSE > 0.75$ (or equivalently $DSE > 1$ because of the minimum 0.25 DSE for a distnat signal). In what follows, I focus on $DSE > 0$ because of the larger sample size, but the regression results are similar."

Rosston (C)44

The statement at page 15, paragraph 1 of Dr. Rosston's testimony that "Looking only at systems with changes in the amount of DSEs limits the data to 6.67% of the Form 3 systems."

Rosston (C)45/Rosston 81

The statement at page 15, footnote 12 of Dr. Rosston's testimony that "Of the total 7,529 observations, there were 502 observations where the DSE changed from the previous period."

Rosston (C)46/Rosston 82

The following references at page 16, paragraph 1 of Dr. Rosston's testimony:

data provided by NAB and compiled by Cable Data Corporation;
data provided by NAB and compiled by BIA Financial Network; and
The process for combining the information from these two databases (a and b).

Rosston (C)47/Rosston 83

Table 1 on page 17, paragraph 1 of Dr. Rosston's testimony.

Rosston (C)49/Rosston 84

Table 2 on page 19, paragraph 1 of Dr. Rosston's testimony.

Rosston (C)54/Rosston 87

Table 3 on page 23, paragraph 1 of his testimony.

Rosston (C)55/Rosston 88

The statement at Appendix B1, paragraph 1 of his testimony that "Cable Data Corporation (CDC) provided a call sign database that contains 100,272 observations consisting of each television station that appeared on each Form 3 cable system during the four accounting period in 1998 and 1999 ("call sign-system pairs")."

Rosston (C)56/Rosston 89

The statement at Appendix B1, paragraph 1 of his testimony that "This data set was merged (by accounting period and call sign) with data provided by BIA Financial Network containing minutes of programming for each of 8 different program categories (Program Suppliers, Sports, Commercial TV, Public Broadcasting, Devotional, Canadian, Low-Power, and Mexican)."

Rosston (C)57/Rosston 90

The statement at Appendix B1, paragraph 1 of his testimony that "Most stations appear in the BIA dataset 4 times, providing programming information for each of the accounting periods."

Rosston (C)58/Rosston 91

The statement at Appendix B1, paragraph 2 of his testimony that "The next step is to create one observation for each unique Form 3 system for each accounting period."

Rosston (C)60/Rosston 91

The statement at Appendix B3, carryover paragraph of his testimony that "Of those call sign-system observations with positive constructed DSE's (i.e., instances of distant carriage), 56.3 percent have a distant signal equivalent of 1, and 43.7 percent have a distant signal equivalent of 0.25."

Rosston (C)62/Rosston 93

Appendix C of Dr. Rosston's testimony.

Rosston (C)63/Rosston 93

Appendix D of Dr. Rosston's testimony.¹

Rosston (C)64/Rosston 95

Appendix E of Dr. Rosston's testimony.

¹ Additionally, in a follow-up discovery request to NAB, Program Suppliers requested that NAB distinguish between the BIA Financial Network and Cable Data Corporation documents. Further, Program Suppliers requested statistical error estimates for the data presented in the Exhibit. In response to the first request, NAB objected stating that the request was ambiguous and incomprehensible. In response to the second request NAB stated that it would endeavor to provide Program Suppliers with statistical error estimates.

First, NAB's objection is completely invalid because the follow-up request could not have been clearer. Appendix D clearly states on its face that the source of Appendix D is Cable Data Corporation and the BIA Financial Network. In this connection, Program Suppliers simply requested that NAB distinguish one source of data from the other. Thus, the request was far from ambiguous or incomprehensible. Second, while NAB stated that it would endeavor to provide Program Suppliers with statistical error estimates for Appendix D, it has failed to provide such estimates to Program Suppliers. Accordingly, based on these reasons, Program Suppliers request that the Copyright Office compel NAB to distinguish between the BIA Financial Network and Cable Data Corporation documents as well as compel the production of statistical error estimates for the data presented in the Exhibit.

Exhibit "E"

Exhibit "E"

Please note that the portions of NAB's direct case testimony set forth below is designated to correspond to Program Suppliers' discovery requests and in the following manner for ease of reference: Program Suppliers' Initial Discovery Request Number followed by Program Suppliers Follow-Up Discovery Request Number (e.g., DeFranco (C)3/DeFranco 16).

DeFranco (C)3/DeFranco 16

At page 1, paragraph 1 of Mr. DeFranco's testimony, Mr. DeFranco states "To identify the location of the cable system, I again used the first community designated by the system in its Statement of Account, as reported by Cable Data Corporation."

DeFranco (C)4/DeFranco 17

At page 3, paragraph 2 of Mr. DeFranco's testimony, Mr. DeFranco states "I used 1998-2 and 1999-2 data provided to me by Cable Data Corporation to identify Form 3 cable systems that carried television stations as distant signals in 1998-2 and 1999-2."

DeFranco (C)5/DeFranco 18

At page 3, paragraph 3 of Mr. DeFranco's testimony, Mr. DeFranco states "I used the list of geographic reference points found in Section 76.53 of the FCC rules to identify a location for each U.S. commercial television station found in the database provided by Cable Data Corporation."

CERTIFICATE OF SERVICE

I, Gregory O. Olaniran, hereby certify that I have, this 10th day of January, 2003, served a copy of the foregoing document in Docket No. 2001-8 CARP CD 98-99, on the parties listed below, as indicated:

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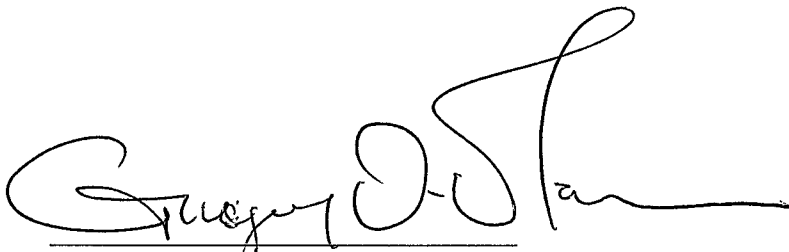
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